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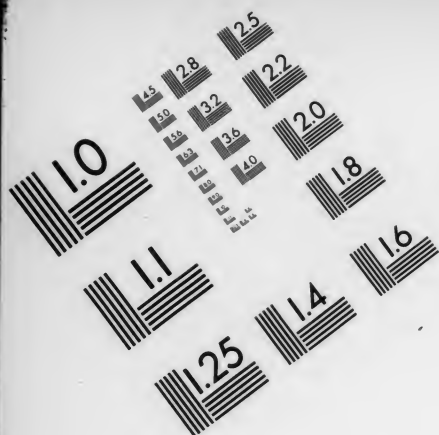
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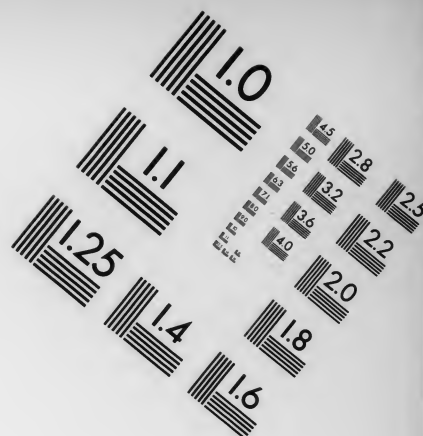


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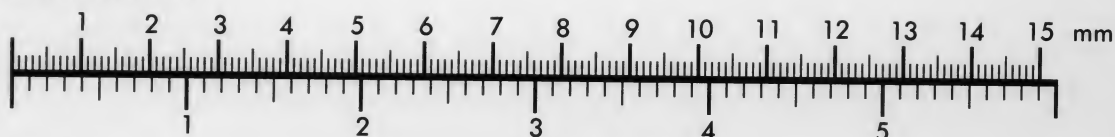
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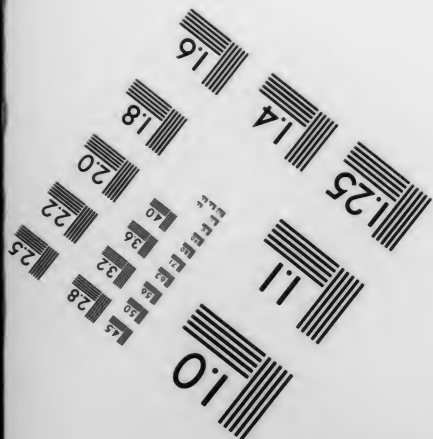
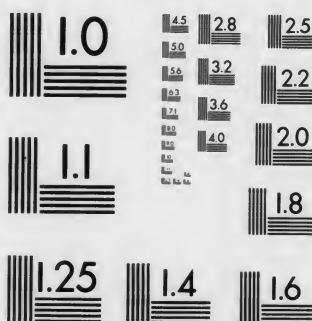
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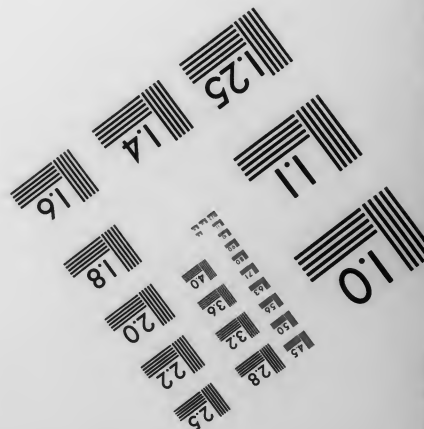
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LECTURES

ON

ETHICS AND JURISPRUDENCE.

BY

J. W. FRENCH, D. D.,

PROFESSOR OF ETHICS, ETC., IN U. S. MILITARY ACADEMY, WEST POINT.

νόμοι ἐψήποδες.

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CONTENTS.

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| | PAGE |
|--|------|
| LECTURE I. | |
| RULES FOR STUDYING THE SUBJECTS..... | 5 |
| LECTURE II. | |
| COMMON PRINCIPLES: FROM LAW AS A RULE..... | 33 |
| LECTURE III. | |
| DEFINITION OF LAW..... | 53 |
| LECTURE IV. | |
| DIVISIONS OF LAW..... | |
| LECTURE V. | |
| EFFECT OF LAW..... | |

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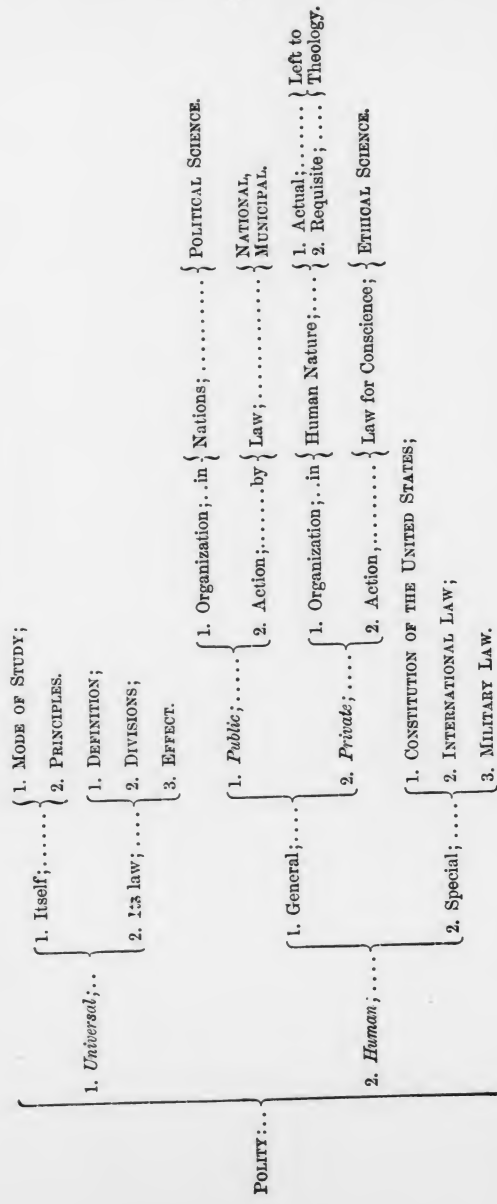
GENERAL AND CONNECTED VIEW.

| | |
|--|--|
| LECTURE VI. | |
| SCIENCE OF POLITICAL ORGANIZATION..... | |
| LECTURE VII. | |
| LAW OF NATIONS..... | |
| LECTURE VIII. | |
| MUNICIPAL LAW..... | |
| LECTURE IX. | |
| ETHICAL SCIENCE..... | |

SPECIAL VIEW.

| | |
|--|--|
| LECTURE X.—XVII. | |
| CONSTITUTION OF THE UNITED STATES..... | |
| LECTURE XVIII.—XXVIII. | |
| INTERNATIONAL LAW..... | |

TABULAR VIEW OF THE SUBJECTS.



MAP OF SCIENCES AND ARTS.

Habits, Mental, for. { 1. EXISTENCE,..... { to be known,.... SCIENCE.
2. ACTIONS,..... { to be done,.... ART.

A. THE SCIENCES (capable of resulting Arts):

Existence is..... { 1. Representative,.....in Signs,.....forming I. REPRESENTATIVE SCIENCES
2. Internal,.....in Thoughts,.....forming II. MENTAL SCIENCES;
3. External,.....in Things,.....forming III. MATERIAL SCIENCES.

I. REPRESENTATIVE SCIENCES.

REPRESENTATIVE SCIENCES—treat of Signs.
Signs (for Thoughts and Things), are..... { 1. Universal,..... { 1. Meanings, LOGISTIC.
2. Conventional, { LANGUAGE, { 2. Derivations,..... CLASSIFICATION (by Categories).
3. Notational, { SYMBOLS, { 1. Particular,..... PHILOLOGY.
2. General,..... GRAMMAR.
1. Conformity to usage,..... LOGIC.
2. Reasoning,..... LITERATURE.
3. Pleasing and instructing,..... RHETORIC.
4. Persuading,..... ARITHMETIC.
ANALYTICS..... ALGEBRA, &c.

II. MENTAL SCIENCES.

MENTAL SCIENCES—
are for the Mind.
1. DIRECTIVE..... { 1. Of INTELLECT, to what must be;... { By mental conceptions of Quantity,..... GEOMETRY.
2. Of WILL, to what ought to be;... { 1. As Beautiful, ESTHETICS.
2. As Good,..... { POLITY,..... { 1. Constituting for action,..... ORGANIZATION, SCIENCE OF ORGANIZATION.
2. Guiding action,..... { LAW,..... { 1. Universal,..... NOMICS.
2. Limited,..... { 1. For men collectively, JURISPRUDENCE.
2. For man singly, ETHICS.
3. As Perfect,..... THEOLOGY (Practical).
3. Of the whole man, to what he ought to know and do,..... { 1. For eternal life,..... THEOLOGY (Universal).
2. For mortal life,..... EDUCATION.
2. DESCRIPTIVE..... { 1. By inward analysis,..... PSYCHOLOGY.
2. By outward observation, for knowing men's natures,..... PHYSIOGNOSTY { Ethnology, Phrenology, &c.

III. MATERIAL SCIENCES.

MATERIAL SCIENCES—
treat of Things.
1. Of FACTS, for Laws,..... { DESCRIPTIVE;..... { 1. In order of Space,..... { EARTH,..... { Surface,..... GEOGRAPHY, { Physical, Mathematical, Political.
2. Whole planet,..... GEOLOGY.
COMBINATIONS OF MATTER,..... { 1. Inorganic,..... CHEMISTRY.
2. Semi-organic,..... CRYSTALLOGRAPHY.
3. Organic,..... BOTANY, { Veg. Physiology Agriculture, &c.
ZOOLOGY, Anatomy, Medicine, Surgery, &c.
ZOOLOGY, { Of Empires, Of Races, Of Ideas, &c.
2. In order of Time,..... { 1. MAN,..... { 1. Collectively,..... HISTORY.
2. TIME,..... { 2. Singly,..... BIOGRAPHY.
CHRONOLOGY.
1. Forces and Motions,..... MECHANICS.
2. Units of Substance,..... ATOMICS.
3. Undulations,..... OPTICS.
ELECTRICS.
THERMOTICS.
ACOUSTICS.
4. Combinations of (Movements of the Masses,..... ASTRONOMY.
Force with Substances in Masses, { Origin of the Substances,..... COSMOGONY.

B. THE ARTS (capable of resulting Sciences):

ARTS OF { 1. Necessity,..... { 1. MECHANIC ARTS,..
2. Utility,..... { 2. USEFUL ARTS,.... Not here subdivided.
3. Pleasure,..... { 3. FINE ARTS,

4. Defence,..... { 4. DESTRUCTIVE and DEFENSIVE,..... { ART OF WAR, pertaining to.. { Things,..... { Fortifications,..... ENGINEERING.
Arms and Equipments,..... ORDNANCE, &c.
Organization,..... ORGANIZATION OF ARMIES.
Movements,..... { 1. Parts, as support for the whole,..... TACTICS.
2. Whole, as directing each part,..... { On land and sea,..... STRATEGY.
On sea,..... NAVITACTICS.
On land,..... GEOTACTICS.

LECTURE I.

ETHICS AND JURISPRUDENCE.

1. THEIR POSITION IN A MAP OF THE SCIENCES: 2. DISTINCTIVE HABITS OF MIND REQUIRED IN STUDYING THEM.

GENTLEMEN: The subjects on which we now enter are divisions of Ethics and Jurisprudence.

Standing on the threshold, you ask two natural and necessary questions: 1. What is the Position of these Subjects in a Map of the Sciences? 2. With what Specific Habits of Mind can we most successfully study them? The answer to the first question prepares for that to the second. It is from the neglect of such preliminary questions when beginning new subjects that so much time is lost in the period of Education. If they are in our books we pass over them, to get to the subject. The common experience is, that we learn how to study a subject after we have studied and left it. The conviction acquired, coming too late, is less a benefit than a regret. Before it is acquired, our interest is deadened, and our acquisitions hindered, by difficulties felt in their effects, not traced to their cause. The remedies are two. The first is to view all knowledge as one, and in learning any one branch of Science or Art to refer it to its place, and to kindred subjects. As in Geography, we begin with the globe, before coming to one country; as in History, we trace the thread of universal, before the details of particular History; as we acquire general

before professional learning, so must it be in every plan for pleasant and profitable study. The second remedy is, to perceive, distinctly, and before advancing in it, the specific habits of mind required by each branch of knowledge. You will then consider these two inquiries with the interest which they deserve.

1. What is the position of these subjects in a map of the Sciences?

The Sciences may receive various classifications. The most natural and simple arrangement is that made by nature. It is founded on a distinction known to all children and to all men. It is the distinction of the objects of knowledge into things, thoughts, and signs. Things are external to us ; thoughts, internal ; and signs, expressive of both. The sciences of things are called Material Sciences. An example of these, when descriptive, is Geography ; and when deductive, Mechanics or Astronomy. Those of Thoughts are Mental Sciences. Examples are in the very subjects which we are about to investigate : Ethics and Jurisprudence, whose place is in this family. Those of signs are Representative Sciences. An example, in conventional signs called Language, is Grammar, or Literature, and in notational, Arithmetic or Algebra. Such is a simple arrangement of the Sciences in three great families.

By referring to the appended map of the Sciences, you will see this arrangement executed.

First in order is the group of Representative Sciences ; then that of the Mental ; then that of the Material.

The subjects before us are in the second. For greater clearness I will recapitulate the primary heads, repeat the divisions of the mental group from the larger tabulated view, and insert some explanations.

| CLASS: | SUBJECT: | NAME: | QUESTION. |
|--------------------|--|--------------------------|-------------------------------------|
| SCIENTES are of | 1. <i>Signs</i> , forming the REPRESENTATIVE; . . . which regard | What | thing and class is expressed? |
| | or | | |
| | 2. <i>Thoughts</i> , " MENTAL; { 1. Descriptive " What is? | What is? | ought to or be? |
| | or | 2. Directive " What must | |
| | 3. <i>Things</i> , " MATERIAL; { " What is? | | |

Such are the primary heads. In the first column you see the class; in the second, the subject of each group; in the third, the name of each; in the fourth, the leading question which each proposes to satisfy.

Mental Sciences, those of the second group, are descriptive or directive. An example of the descriptive is Psychology, a science which describes the faculties of the mind from their internal operations. Ethics and Jurisprudence belong to the directive division. I therefore repeat and unfold this division:

| | | | |
|---|---|--|-----------------------|
| <i>Sciences, MENTAL, DIRECTIVE; their subject, Order.</i> | 1. For Intellect; (to what must be). | By Conceptions..... | GEOMETRY. |
| | 2. For Will, (to what ought to be) | 1. As beautiful..... | ÆSTHETICS. |
| | | 2. As good..... | POLITY. |
| | | 3. As perfect (eternally and with The Eternal)..... | THEOLOGY (practical). |

As our subjects lie under Polity, we will now bring that down, and divide it.

| | | | | |
|--|------------------------------|---------------------|--|--|
| POLITY: by <i>Order</i> , from <i>Reason</i> . | 1. Constituting action; } | ORGANIZATION; | 1. Universal. 1. For men collectively all acting for good of each. 2. Limited 2. For man singly; (each acting for good of all and of self) | SCIENCE OF ORGANIZATION. NOMICS. |
| | 2. Guiding action; } | LAW: | | JURISPRUDENCE. |
| | | | | ETHICS. |

Directive Mental Sciences have for their subject Order; and this in the Intellect or the Will. Those for the Intellect regard what must be; those for the Will, what ought to be. The former are exemplified in Geometry. Geometry regulates the intellect, by accurate mental conceptions, conformed to things and expressible by signs. The latter, those for will, consider what ought to be, as beautiful, or as good, or as perfect.

The science for the beautiful is that of *Æsthetics*; that for the good, *Polity*; that for the perfect, eternally and with an eternal object, is *Theology*. *Polity* is order in any system (as conceived by our reason), for some end proposed to the will. This order may regulate the nature of the system, constituting it *before* action. This forms organization. Or, this

order may regulate the subsequent action of the system and its parts. This forms Law. Law is universal or limited. It is universal as belonging to all beings. The science which treats of Law in this Universal Sense let us call Nomics.* Law limited belongs to human beings. It applies to men collectively, or man singly. For men collectively, it directs the action of a whole society for the good of each member, thus forming Jurisprudence; or, it directs the action of each, both for his own good and for that of all—thus forming Ethics. Jurisprudence and Ethics are, therefore, divisions of Universal Law, and they, with Law, are branches of Polity.

We have thus an answer to the first inquiry: What is the position of Ethics and Jurisprudence in a map of the Sciences? *They belong to the Mental Sciences. In this family, they are among those which are directive of the will to good, private and public. In this latter, and under Polity, they pertain to Action, and thus to Law. In the domain of Universal Law, they are limited to human beings. In Law limited, Jurisprudence belongs to that division which proposes public good immediately, and private, derivatively; Ethics, to that which proposes immediately private, and derivatively, public good.†*

The second question is, How can we most successfully study them?

I answer: by making your habits of thought to conform strictly to the subject, and to its leading question.

This is the rule for all good study. I will therefore show you how the same rule is applied in each of the three groups of the Sciences. I will present in each—1, Its subject; 2, The question proposed by that subject; and, 3, The habits of

* From *nomos* (νομος,) Law.

† It should be kept in mind, that these two forms of good are necessarily and perpetually connected, and that, consequently, the two subjects of Ethics and Jurisprudence cannot be wholly dissevered without injury to our understanding of each of them.

mind required by that question. I will, then, and from these general rules for all sound acquirement, deduce the special habits required by Ethics and Jurisprudence.

By such a course, you will have a double advantage. You will learn how to discipline the mind, and to increase your intellectual power, throughout life. You will be fitted both to study the subjects before us pleasantly and well, and to form wise and sound opinions in morals, in laws, and in the science of government.

Knowing well your desire for condensed and precise representation, I bring this whole subject into a tabular view. Your own minds can fill up much of the outline.

[See Table on next Page.]

I will accompany this tabular view with only so much of explanation as seems indispensable.

You will observe, then, that each family among the Sciences has its specific subject. The subject fixes the question which any science or group of sciences proposes to answer. That question, in turn, directs naturally to the intellectual habits which are demanded by it. We are to consider, therefore, the Subject, the Question, the Habit, belonging to each of the great divisions.

I begin with the Representative Sciences, because nature, reason, and experience place them at the commencement of all learning. The child learns how to speak, then how to speak correctly, then how to calculate by numbers. Signs Conventional, in Language, signs Notational, in Arithmetic, the two scientific divisions of all signs,* are thus put to our very lips by nature.†

* The principles of Notational Signs belong to Mathematical Analysis; those of the Conventional, or of Language, when used for reasoning, to Logic. The principles of both, principles pertaining to all signs, form a science, neglected in modern times, named in the Table, Logistics.

† An obstacle to scientific discovery is in the disregard by scientific men of this law of nature. In English Science we have learned Induction from Bacon. At

TABULAR VIEW OF THE SUBJECT, QUESTION, AND HABIT IN EACH FAMILY OF THE SCIENCES.

RULE:—HABITS OF STUDY MUST BE CONFORMED TO THE SUBJECT, AND TO ITS LEADING QUESTION.

| | | |
|-----------------------------|--|--|
| I. REPRESENTATIVE SCIENCES; | 1. Subject;..... | Signs, as representing thoughts and things in classes, for specific purposes. |
| | 2. Question..... | What is represented? |
| | 3. Habit;..... | Reduction, under heads,..... |
| II. MATERIAL SCIENCES; | 1. Subject;..... | Nature (including Man)..... |
| | 2. Question;..... | What is?..... |
| | 3. Habit;..... | Observation; that things correspond to our thoughts; with..... |
| III. MENTAL SCIENCES; | (a.) Descriptive..... | Subject, { Question, { with the Material Sciences. Habit, { |
| | (b.) Directive..... | (Subsequently divided.) |
| | Necessary truth, in Conceptions of Quantity, for (directly correspondent to what exists, and expressible by Signs. | |
| Of INTELLECT; as Geometry; | 1. Subject;..... | What must be? |
| | 2. Question;..... | DEMONSTRATION; including..... |
| | 3. Habit;..... | Possible truth, in Conceptions of Quality belonging to ends, which are not necessarily correspondent to what exists, nor fully expressible by means. |
| Of WILL;..... | 1. Subject;..... | What ought to be? |
| | 2. Question;..... | CONCEPTION OF QUALITIES, for Predicaments, including..... |
| | 3. Habit;..... | Habits; general..... |
| III. (b) MENTAL SCIENCES. | | Habits; special..... |
| | | In rules for Ethics and Jurisprudence.* |

1. Form clear conceptions of moral and legal purposes.
2. Discriminate carefully, and direct attention to each.
3. Test the proposition by sound and close reasoning.
4. Unite authorities with reasons; and give reasons by the probable, and not the demonstrative method.
5. Prefer opinions moderate and practical.

In the Representative Sciences we have for the subject, *Signs*, as representing thoughts and things in classes; so representing them, within us for the regulation of thought; and without us for specific purposes. The question arising from this subject is: *What is represented?* And this question ever takes two divisions: 1. In what class is the thought or thing which is represented? 2. For what purpose is it represented? There can be no system of Signs without classification into general and particular, nor without a purpose. The habit of mind corresponding to this question is that of Reduction under heads. The heads are two: 1. Heads of Significations, called Categories (the foundation of all Logic): 2. Heads of Purposes. In previous studies you have exercised this habit of mind. You have, in Grammar, reduced the significations of words, apart from a sentence, to their established heads of meaning, to their natural categories; some, as expressing actions; some, passions; some, quantities; some, qualities; and so of the rest. You have reduced words in a sentence to heads of purposes; for example: to assert, to be subject to assertion; to qualify, to modify. You have thus formed the parts of speech. You have discriminated Rhetoric from Poetry by its purpose—that of persuasion. You have appreciated Poetry by reducing it to its purpose—pleasure through the taste, imagination, and emotions, and have not said, with the reasoner over *Paradise Lost*, “I cannot see that it proves any thing.” You have, indeed, pursued the same course in notational signs, those of mathematical analysis,

last, Sir John Herschel and others have taught what Bacon began to teach when interrupted by death, that there must also be Deduction. What is needed now, is a conviction of the necessity of the other strand for the “threefold cord,” which strand is Reduction. We must know the laws of arrangement by the categories furnished through language. This is needed, both for making and stating discoveries. And this Reduction, under the categories of Language, must *precede* Induction and Deduction. Induction belongs to things, Deduction to thoughts, Reduction to Signs. Men use the Notational part of Signs in Algebra, and the Calculus for studying nature. What moves one's wonder is, that they do not also use the Conventional part. In all the rest they proceed on the eternal correspondence between things, thoughts, and signs. Why should Language, then, be excluded?—that almost divine instrument of classification!

reducing them to heads of significations, and heads of purposes in operations.* Such is the subject, such is the question, such is the method in the Representative Sciences.

Next follow the Material Sciences. The subject in them is nature in its facts and laws. Nature includes, of course, Man. Nature and Man are both considered in the order of existence, and in the order of action.

The question is ever proposed by that subject—*what is?* This is applied to any given space, and any given time. The habit of mind correspondent to this question is that of Observation, because you are considering what exists, has existed, will exist. This habit has two divisions: Induction and Deduction, the necessary reductions having been learned from the Representative Sciences. By Induction we acquire facts for laws. By Deduction we derive laws from principles. For the facts, we use memory, and for laws, as deduced, our reason. But, in these Material Sciences, we prize what we place in the memory and in the reason, in proportion as it corresponds to reality in nature, as shown by observation. We are asking for *what is*. You have instinctively followed these processes, because you found that you could learn in no other way. You have stored your memory from the Descriptive Sciences: Geography, History, Mineralogy, and others. You have applied your reason in the Deductive Sciences; Mechanics, Astronomy, and those which trace the graduated undulations of Nature's unbounded ocean. But you have tested each step by Observation, by conforming to the ever present question, *what is?* Supposed facts or laws you would deem valueless, because not correspondent to reality. Such is the subject, such the question, such the method, correspondent each to each, in the Material Sciences.

In the Mental Sciences the movement is the reverse of the

* Of course, in these, the "Notational Signs" of Mathematics, our second consideration is, *what must be*. But this results from the nature of the thing represented—quantity. Our signs perfectly correspond to our thoughts, and our thoughts to things in nature. Hence comes the perfect certainty of the conclusions. Language, a system of conventional signs, has not, as commonly employed, this perfect correspondence. Hence the uncertainty of common reasoning.

last. It is from our thoughts to external things. In the Material, as you observe, we pass from things to thought. In the Representative, we proceed from the Signs in both directions; internally, to thought, for its regulation, and externally, to things, for an analysis of them.* But, in the Mental Sciences, we proceed from conceptions within us to things without us.

The *Mental Descriptive* come under the same rules with the Material Sciences. They need no farther remark. We leave them for the *Directive*.

We must separate here the two divisions of the *Directive Mental Sciences*; those for the Intellect and those for the Will, and must see, in each, its *subject*, its *question*, and its *method*.

The subject in Geometry is *necessary truth in Mental Conceptions of Quantity, perpetually correspondent to what exists in nature, and fully expressible by Signs*. By necessary truth, I mean any proposition whose contrary is mentally impossible, as, for example, that a whole is greater than a part. Under Signs, I include figures as well as symbols. Every one of you knows that in Geometry he is directly occupied with the conception, rather than with the external representation; with the circle or triangle conceived, not with that drawn. Those conceptions are always verified by nature; thought and thing, the ideal and the real, being correspondent. The carpenter finds the squares of the sides of right-angled triangles to be as proved by theory. The surveyor finds the spaces of land included by lines cutting each other in the same circle to be equal.†

The leading question arising from the nature of the subject is: *What must be?*

The correspondent habit of mind is that of Demonstration.

* Again we may observe the necessity of Signs, and of Reduction, as part of the scientific process, together with Induction and Deduction. Language, as an organism, in its classified significations, is the great instrument for thought.

† If two straight lines within a circle cut one another, the rectangle contained by the segments of one of them is equal to the rectangle contained by the segments of the other.

This includes Conception, Intuition, Inference. Conception is for the subject of the proposition: for example, a straight line. Intuition is for self-evident propositions, which require no reasoning: for example, a straight line is the shortest distance between two points. These propositions come from definitions; definitions from classification; classification from an exact conformity in thoughts and in words, to things. Hence comes the perfect truth of the inferences. Inference is for those propositions, which are conclusions drawn from the self-evident by reasoning. And the whole habit is a contemplation of questions in which but one side can exist. You have learned this habit. It has come by practice. Such is the subject, such the question, such the method in Geometry.

We have thus seen the subject, the question, the method, or habit, in the departments of knowledge which you have traversed. You now see that in successful study you adapt your method of thought to the specific matter, the subject, and to its appropriate question. But now, to specify this view, let us come to the other group of the Mental Sciences—to those *directive of Will*.

(1.) *In the Mental Sciences, directive of Will, the SUBJECT is possible truth, in mental conceptions of ends as possessing Quality, which conceptions are not necessarily correspondent to what already exists, and are not fully expressible by means.*

(2.) Their QUESTION is: *What ought to be?*

(3.) The primary HABIT of mind which they demand is THE CONCEPTION OF QUALITIES.*

Subordinate habits will be subsequently regarded.

Beginning with the first statement, I will explain it part by part, and then add some examples for illustration.

In this circle of Sciences (though in many of their applications, they are *Arts*), "the Subject is possible truth," because the question—what ought to be?—implies what *may be*, or

* The Qualities are commonly in the predicate: as right, good, just, beautiful, perfect, &c.

may not be. In this particular they differ from the pure mathematics, which regard what *must* be.

By "possible" truth, I mean a proposition whose contrary may exist because mentally possible. It is a statement in words, of that in thought, which, in things, may be or may not be. For example, "some human actions are right." If the idea of a human action always implied rectitude, as the idea of a circle implies the equality of the radii, all actions would be right. The contrary would be impossible. No actions could be wrong. The proposition would belong to necessary truth. But since some human actions are right, such as telling the truth, and some wrong, as cheating another, the contrary exists.*

By "Quality," I mean a mental estimate through which we approve or disapprove. "This building is beautiful, that music disagreeable;" "The divine character is perfect, the human imperfect;" "This action was right, and that wrong;" "This law is just, that law is unjust." We estimate the qualities of beauty, perfection, right, justice. We approve them, and disapprove their contrasts. Quality belongs to all these Sciences, as implied by the question, what ought to be? In this, also, they *differ* from the Mathematics which treat of Quantity. We shall subsequently see, also, that Quality appears in the predicate of their propositions and questions.

By an "end," I mean a desirable object of the will. Happiness is an end, virtue is an end, public justice, public prosperity, public honor, are ends. The ends which we pursue through action, or passively enjoy in possession, are, of course, to have the qualities which we approve, not those which we disapprove. These subjects have ends, because they consider what ought to be; not what is, but what is to come into being, that is, to *be-come*. In this, also, they differ from the Mathematics and from Demonstrative Sciences, which proceed from

* I reject here, for simplicity, the distinctions of Logic, contrary, sub-contrary, contradictory.

first principles to conclusions. But these reversely proceed through means to ends.

By "mental conceptions of ends as having qualities," I mean ideals in thought of the object desired, invested with the qualities approved. By ideals, I mean what was originally signified by the word, *idea*; mental vision, (*ιδέα*, from *εἶδω*, I see). An ideal is a mental conception of that which is to become real, made as distinct as if the object were before the bodily vision. Such conceptions must belong to these subjects, because an end is proposed, which being mentally intended, must be first mentally conceived. Trace the fact in examples. The architect plans his building, sees it in idea, before erecting it. The painter sees in imagination his picture before he puts it on the canvas. The virtuous man, the hero, the Saint, pursues his bright image of excellence. The statesman's vision is:

To scatter plenty o'er a smiling land,
And read [his] history in a nation's eyes.

They conceive what ought to be. These Subjects *agree* with Geometry, in requiring us to begin with distinct mental conceptions. And as there, your progress is in proportion to the distinctness of your conceptions of Quantity and of the first principles, so *in these studies your progress will be in proportion to the distinctness of your conceptions of Quality, and of final purposes*. Geometry, in teaching the general habit of clear mental conception, has prepared for a part of the mental habits required.

By the "conception not being necessarily correspondent to what exists," I mean the reverse of the fact which we have seen in the Material Sciences, and in the Mathematical. In the Material, we begin with things. We proceed to thoughts, and make the understanding the mere mirror of existing nature. In Geometry, we begin with thoughts. But the practical value of our conclusions is not in their logical connection with the premises, for the most absurd metaphysics could produce the same connection, but *in the primary corre-*

spondence established between our internal conceptions, and that external nature which is framed by number, weight, and measure. So, too, in all mathematical analysis, by Symbols, we begin with signs, proceed from them to thought, and finally to things. But, again, the worth of conclusions does not depend on the exactness of the combinations in the signs. Any system of arbitrary signs on any subject could be made to move like a machine, in a similar way, through possible combinations. The value of the work lies in the exact conformity originally secured between the signs, together with their correspondent mental operations on the one side, and, on the other, nature as existing or moving. An exact correspondence to things, is, then, the primary requirement in the Material and Mathematical Sciences. But Ethics and Jurisprudence, as well as Æsthetics and Religion, all of which belong to one group, by proposing the same question, commence with a contrasted demand. The mental conception is designed to show what ought to be, and not what is; what we desire by will to have existing, not what we know by understanding to be existing. Napoleon, for example, found France in anarchy. He set his will on producing order. He called into existence the needful institutions and laws. Studying them now, we say they were what they ought to have been.

By "means," I intend the whole action for the end, including the agent and his capacity, together with the instruments and materials employed by him.

By the conceptions "not being fully expressible by means," I design merely to state a fact of common experience. It is that the outward work does not always equal the conception. I do not say never, but not ever. In some cases it cannot. This results from the limitation and imperfection of means. In the constitutions and laws of all countries, there is much desirable which is wholly impracticable, because of the limitations of circumstances. And in the rest of the group we see the same fact. The artist has visions which he cannot embody, the virtuous man good wishes for others which he has not the

means of executing. In this, these Sciences *differ* from the Mathematics, in which all possible conceptions can pass from the sphere of thought, to the sphere of signs, by figures or by symbols.

We have thus learned fully the nature of the subject-matter in the group of which Ethics and Jurisprudence form a part.

I have thus explained, one by one, the parts of the first statement.

I now add some examples, for illustration.

In *Æsthetics*, the quality considered is that of beauty. The idea of the beautiful is formed as a glowing mental conception in the soul of the artist, whether poet, architect, sculptor, painter, musician. His materials are words, or stones, or marble, or colors, or sounds. He seeks to realize his ideal in his material, guided by the question, what ought to be? But the execution is ever below the conception. His power and materials are limited.

In Religion, the quality considered is that of perfection. The idea of moral perfection is conceived by a religious man. He seeks to give it reality by his own spiritual and moral improvement, begun before, but attained in immortality. His materials, are in divine influence, and in his own efforts. His question is, what ought I to be? But in this world his attainments are far below his conceptions.

In Ethics and Jurisprudence, the quality considered by both is that of human good, private and public.

In Ethics, the good proposed is, as before stated, directly private, and derivatively public well-being. The mental conception formed is that of personal virtue. The materials for giving reality to the idea are the habits and actions of the individual. His questions are, what ought I to be in habits, and to do in actions? But the mental conception of virtue shown in every person's resolutions and intentions, is ever far above his actual conduct. This inferiority of execution to concep-

tion, of the real to the ideal, also results from the imperfection attending the workman and his materials.

In Jurisprudence, the good proposed is directly public weal, and derivatively private. The mental conception of the legislator is a fair ideal of public welfare, of impartial justice, of national glory. This is set before his mind whether he be devising a constitution or a subordinate law. His question is, what *ought to be* in the public for the common good? The materials for giving reality to the conception are laws organic or subordinate, made, executed, administered. But in the practical working of these, the good attained falls short of that intended. The real does not reciprocate with the ideal. The conception is above the execution, and from the same cause, the imperfection of materials.

The parts and the examples will make very clear to you the first statement. It appears evident that in the Mental Sciences, directive of Will, the subject is possible truth. This exists in our mental conceptions of purposes. These purposes, these ends, have Quality. Our conceptions of the ends and the qualities are not necessarily correspondent to any existing realities. Our conceptions when complete are not fully expressible by means.

We have thus seen, in this circle of Sciences, the *Subject*.

The second statement refers to the Question. It is evident that the leading question arising from the Subject, is, perpetually, *what ought to be?*

The third statement pertains to the mental habits which are required for this subject and by this question.

The primary mental habit demanded is the CONCEPTION OF QUALITIES. The quality proposed, whether the beautiful, the good, the perfect, is to be made mentally a vivid idea, or yet more strictly, an ideal. It will assist you to observe now one simple and interesting fact already indicated. The quality which you are thus to form into a clear conception lies throughout these subjects, in the predicate of your propositions. But in Geometry the side of the proposition, where distinct concep-

tions of qualities must be formed with primary care, is that of the Subject. "This picture is beautiful;" "This action is virtuous;" "This law is just;" "Such a nature or character is perfect:" these are examples of propositions in this group of Subjects. It is plain that the key to each lies in my distinct conception of the predicates; of beauty, virtue, justice, perfection. But in these propositions: "The triangle contains three right angles;" "The circle subtends a right angle on its diameter;" "Parallel lines make the alternate angles equal," it is plain that the key to knowledge is in the clear conception of the subjects "triangle," "circle," "parallel lines." For both kinds of propositions then there must be clear mental conception. But in these which regard what ought to be, that conception is to be primarily of the Quality attributed or to be attributed.

This Conception of Qualities is clearly different from the mathematical conception of Quantities as Subjects.

This conception, then, is the primary mental habit, which these studies, from their nature, must demand.

This fundamental habit has three natural applications. It, and the applications, have one inevitable condition. The applications are by Apprehension, Sentiment, Judgment. The inevitable condition is Proportion.

Apprehension is an understanding of every circumstance in the thing, the subject presented, as a picture, an action, a law, a character. Sentiment is an estimate of Quality by the passive reception of impressions, and the comparison of the thing with the ideal conception before reasoning. For example, I witness a mean and cruel action. I feel instantly, before deliberation, its moral quality, by native moral sense. The action differs from my conception of right. Judgment is a justification of the estimate by reasoning. I prove to the man, or to myself, or to another, that he did act basely and cruelly. Such are the applications. Next, mark the condition.

Proportion is the medium between too much and too little, or relative equality. It is the inevitable condition in all ques-

tions of Quality, in all cases where we consider what ought to be. Disproportion introduced into any work of Nature or Art will turn beauty into deformity. A hand may be lovely in itself, but it ceases to please in the living person, or picture, or statue, when too large or too small for the body to which it is attached. It is so in Ethics, where the Virtues appear as a medium between vices. (*Prac. Eth.*, ch. i., 20.) The same rule extends, as we shall see, to all organizations of Government, and to all Laws. Disproportion will make the same elements of Government injurious, which, in due proportion, were beneficial. Disproportion will cause a law to work injustice, which, by due measure, would have been just. This absolute necessity for Proportion results from the nature of the subject-matter, Quality. All Qualities have degrees and opposites. It is a familiar fact that the qualifying word, the Adjective, has degrees of comparison in this, as in all human languages. This is evidence that qualities have degrees. The extremes of degree, by excess or defect, are contrasts; as heat and cold, whose medium, as proportioned to man, is the temperate. Disproportion must change the degree, and when excessive, will generate the contrast. This law, then, is inherent in qualities. It attends those belonging to this group of subjects. Proportion is essential for Beauty, Virtue, Public Justice, Public Welfare, Religion.* Excess or defect will remove the quality approved, and substitute that which we cannot approve. Proportion, the observance of the just mean, is, therefore, the indispensable condition in this entire group.†

Conception of Qualities is, then, the fundamental habit; Apprehension, Sentiment, Judgment, are its applications. Proportion is the indispensable condition for making Conception, Apprehension, Sentiment, or Judgment just and true.

* Religious virtues must have proportion to an infinite object, and be mutually proportioned to each other.

† The ancients made Morals a branch of Music, that is, of proportion and harmony. Plato, *De Rep.*; Strabo, 10th b.

You will observe that in these subjects a proposition is presented, put as a question: "Is the Parthenon beautiful?" Reasons (which are called in Logic the middle terms or term) are employed for the affirmative and negative. Conception, as you see, belongs to the predicate of the proposition, as "Beautiful:" Apprehension, to the subject, as "the Parthenon:" Sentiment, to the whole proposition, as the "Parthenon is beautiful:" Judgment, to the middle term, as "*What is nowhere defective*, is beautiful." Proportion belongs to all.

These are the general habits of Mind. I now apply them in five special rules of thought for Ethics and Jurisprudence.

In Ethics and Jurisprudence:

1. *Form clear conceptions of Moral and Legal Purposes.*

This rule applies the first general habit.

In Purposes, I include their required qualities. In Moral and Legal Subjects, such conceptions of purpose are what those of first principles are in the exact Sciences; they are the fountains. All conclusions by demonstrations are implied in the primary definitions and axioms, and are deduced consecutively. So, Moral and Legal Propositions are enveloped in the purposes of Ethics and Jurisprudence, and are developed successively. As in demonstrative knowledge, your progress depends on your perfect understanding of the primary principles; so in these subjects, now offering you welcome, your advancement will depend on your distinct conceptions of Moral and Legal Purposes, with their required qualities. For example, the departments of Jurisprudence, lying before you, are, Constitutional, International, Military. The Constitutional is the Science of the Organization of Governments for Nations. This Political Science presents a great purpose—the union, in one political body, of the most varied diversities, for Public Welfare, Justice, and Virtue. The more distinctly you perceive that purpose, the better can you understand and estimate by its qualities the political organization of any people. In the Constitution of the United States, that purpose is given in its preamble. It includes "Union," that blends all differences

into harmony; "Justice," executed externally and within; "Tranquillity," through law or force;* "Defence," against other nations; "Welfare," for all interests; "Liberty," present and prospective, for all rights.† When you bring into one conception these lineaments of the fair ideal of our fathers, when you make the image more vivid by the contrasted evils averted—Disintegration, Injustice, Civil Discord, Conquest by the Foreigner, Public Misery, Tyranny—then the mind is prepared both to appreciate the provisions of the Constitution, and to understand the reasons of the laws formed under it. So, for International Law there is embodied in its Code the idea entertained by nations of "what ought to be" in their mutual intercourse. There is the idea of what is due by a nation to others, and to itself; and to itself, not in the time of one generation only, but for its long existence, and for the name which it will leave in history. The more distinctness you give to your mental conception of this ideal of public justice, interest, and virtue, the more of apprehension and of sound judgment can you extend to the maxims and questions of International Jurisprudence. So in the "Rules and Articles of War," the purpose proposed is the good of the service through Discipline, Justice, and Subordination to Law, as administered by persons. Seeing the end, you can estimate the excellence of those arrangements derived in outline from two warlike nations—Rome and England. In that part of this admirable Code which pertains to Military Courts, there is a perpetual aspiration to make so real the idea of impartial and unsullied justice, that no one shall ever receive wrong from a soldier's tribunal. When that conception of justice is embodied in your own thought, must you not have a more ready comprehension of the principles and the practice; of what is legal and what regular? These are examples from divisions of Law. But the same natural necessity for a primary conception of

* "Lex aut vis valet."—Bacon.

† See the Preamble to the Constitution.

purpose and quality attends Ethics. Its direct purpose, as we have seen, is the good of the individual through virtue. Make distinct in the mind the image of that personal nobleness, to which the science of Morals seeks to guide you through good living,* and you are prepared to comprehend Ethical principles with a kind of intuition. The necessity of the first rule is thus made evident.

A common hindrance in the study of these subjects comes from the neglect of this primary action of the mind.

You may ask how these conceptions are to be obtained; I answer, from Nature. They are in every man's mind. We have but to call for conceptions of right, of public justice, of virtue, of true welfare, and they stand before us.

This rule applies specially to the predicates of moral and legal propositions: as "This action was *right*;" "This law is *just*."

2. *Discriminate cases by careful attention to every circumstance in each one.*

This is the general habit of Apprehension belonging to the whole group, applied now to Ethics and Jurisprudence. This habit has been, it is supposed, fully formed by other studies.

This second rule applies specially to "*the subject*," in moral and legal propositions: as, "*This action was right*;" "*This particular law is just*." We study thoroughly the particular thing of which a moral or legal quality is affirmed or denied.

The neglect of this rule forms a common and serious hindrance in these subjects. Even active and disciplined minds oscillate between this rule and the former. Some conceive vividly, but do not study cases thoroughly. Some attend to every particular in the subject, but do not develop their moral and legal conceptions.

3. *Test the proposition by instinctive sentiment before reasoning upon it.*

This is an application to Ethics and Jurisprudence of sentiment, the third of the previous habits required for the whole

* "*Ars bene vivendi*."

group by the prominent question. But your very special attention is called to this rule. The neglect of it is a fault almost universal, and universally attended with most injurious consequences, not only in studies but opinions; not in the latter only, but in life; and not merely in life, but in the habitual estimates which we form of Morals and Laws themselves.

You will observe, then, that this neglected rule results from the very nature of moral and legal considerations. The consideration of "*what ought to be*," implies that some good, as private virtue, or public justice and the like, is proposed. These objects do not address our reason so directly as they do our moral sensibilities, our inborn sense of right and wrong. They are qualities for which we are provided with a moral sense, as for light and colors we have an eye, and for sounds an ear. Reasoning has its place, as it has in correcting the estimate of distances seen, or of sounds heard. But it is in vain to attempt an understanding of Ethics and Jurisprudence by abstract reasoning, apart from all moral perception. Such a plan of thought is unnatural, unnecessary, irrational. By mere abstract reasoning from premisses we can prove or disprove any thing. The liar, the thief, the murderer, will no doubt answer you with abundant reasons. Any one of us can argue himself into a belief that any thing wrong which he desires to do, is right. But you will bear in mind that the question ever before us is, "*what ought to be*." It is not—what may be proved. And to estimate what ought to be, we have something quicker in act than discursive reasoning. We have intuitive sentiment. This sentiment in its full activity, therefore, is necessary, because it is the organism provided by nature and by its Author. Unless you bring it to these subjects, instruction on them is discoursing on colors to the blind, on music to those who cannot distinguish one tune from another.

This rule applies, as you observe, to the whole proposition, as distinguished from the reasons for or against it.

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This rule applies, as you observe, to the whole proposition, as distinguished from the reasons for or against it.

In all knowledge, a clear understanding of a proposition is half of the solution—"montrer, c'est démontrer." You can now see the value of the three rules thus far given, by observing that they give you a complete possession of the proposition; the first, by its predicate; the second, by its subject; and this third, by the union of both, tested by impressions.

4. *In proving or disproving, unite authorities with reasoning, and conduct the latter by the probable, and not by the demonstrative method.*

This is an application to these subjects of the general habit of judgment, the fourth of those given.

After the proposition has been thoroughly taken in head and heart, the next step is to consider, in cases where more is necessary, the arguments for and against. These are of two kinds—authority and reason.* In authority, we have proof from others; in reasoning, from ourselves. In Ethics and Jurisprudence, both must be used, and authority predominate.

But the reasoning must be by the probable, and not the demonstrative method.

This rule results from the nature of all moral and legal questions. They have two sides. Hence the habit of mind must be that of viewing both sides. This forms, as shown in Logic, the distinction between probable reasoning and mathematical demonstration. In Mathematics, there is but one side to every question. In them we consider what must be. That which is contrary to the conclusion is mentally impossible. But for the propositions of Ethics and Jurisprudence there are arguments for the affirmative and for the negative. We consider what ought to be, and thus, what may be, or may not be. The contrary to any conclusion is mentally possible. Is the accused guilty or not guilty? Is the evidence satisfactory or not? Should privateering be or not be abolished? Has or has not the National Government of the United States constitutional power to make internal improvements? May we or may we not utter a falsehood to save life, or to secure an

* Inartificial and artificial proofs among the ancients.

insane person? These are examples of legal and ethical questions. They have two sides.* It is evident that he who views the arguments on one part only, does not give the subject a fair and full consideration. *Accordingly, the habit of mind required is that of estimating completely all the reasons on each side of every question, and determining by sound judgment in which part is the preponderance.* This is the judicial habit of mind. On some public buildings you may have seen the statue of Justice with the balances in her hand. In that image is embodied the mental disposition which you need for moral and legal studies. Ever carry the balances. Give each part what belongs to it. Then estimate which side has most weight.

The neglect of this rule is a common and fatal obstacle to sound judgment in these subjects. This obstacle attends all minds which are not moderately, but immoderately and exclusively, metaphysical or mathematical.† Accustomed to necessary questions and scientific demonstrations, they expect to find the same in subjects where they cannot exist. But *the kind of reasoning used, must be ever adapted to the matter reasoned upon.* Demonstrative reasoning belongs to necessary propositions, is there in its place, and there indispensable. In these subjects, it is out of place. It is not, according to a very common prejudice, of any more inherent value than probable reasoning. Its whole value consists in its primitive conformity to the nature of things. Without that, it would

* My conception of the perfect arrangement of a work on these subjects would be the following: Every proposition is to be put as a question. Then all the arguments in the negative are to be stated and numbered as objections. The affirmative is then to be supported first by authority, and next by reason. The reasons are then to be applied to the objections one by one. Such a work would be satisfactory and instructive, but too voluminous for a limited course of instruction.

† This obstacle can be removed only by teaching the common rules of all reasoning, which is the office of Logic. Logic cannot be safely omitted from any course of education, and especially not, where the course is largely demonstrative.

be worthless, except as a mental discipline. Probable reasoning has also conformity to the nature of things. Each kind of reasoning, then, is good in its own sphere, defective in results out of its sphere. Of the two kinds of men unfitted for sound judgment, as lawyers, legislators, statesmen, moralists, the metaphysicians* are more defective than mathematicians. Both look to one side of a question, and simply demand unbroken links between the premisses and the conclusions. The mathematician, however, supposes an original conformity between his conceived premisses and external facts in nature. But the metaphysician asks for no such conformity, but only that his conceived premisses shall receive assent from himself and others. He then deduces his conclusions, and despises facts.

Such is the necessity for this rule.

The rule belongs, as you observe, to the middle term, to the reasons for or against the proposition.

5. *Prefer opinions which are moderate and practical.*

This applies the general habit of Proportion, last of the previous series.

This rule results from the nature of moral and legal conditions. Both Moral and Legal Sciences are limited as to the qualities of which they treat, and as to the materials with which they work; and these limitations form the ever-during conditions for those sciences. The Qualities, Moral and Legal, of which they treat—the virtuous, the just, the useful, all of them forms of good—have this characteristic, that they cannot be carried to excess without producing the contrary qualities, the vicious, the unjust, the hurtful; all of them forms of evil. Proportion is their life. It is by moderation that they live, move, and have their being. Hence comes the first part of the rule, for opinions that are moderate. In Ethics, is not courage between rashness and cowardice? In the laws of penal justice, if we multiply the death-penalties for crime, what can we find but the experience of Athens under the laws

* An example is Locke, writing on Government, or drawing up a constitution for a colony.

of Draco, and of England when her code was far too sanguinary! If we abolish the death penalty, murders abound. In Political Science, if we give too much power to the many, we have one kind of evils; if too much to the few, another; if too much to one, another. Government must, therefore, be made by the tempering, proportioning, balancing of all. So is Proportion demanded. It is with Moral and Legal qualities as with the nose of the Grecian statue. Deviate from the line by excessive projection into the aquiline, or by excessive depression into the upturned, and there is deformity.* You see, then, why the intellectual habit of Moderation must be carried by you into these subjects. Your minds must listen to Ethics and Jurisprudence with a musical ear, conscious ever that disproportion is discord.

The materials with which Ethics and Jurisprudence do their work, are, as before shown, imperfect. Moral, legal, political conceptions, beautiful in idea, cannot be fully realized because of the imperfection of the materials. In Geometry, as we saw before, the real and the ideal correspond. But, in these subjects, the real is not equal to the ideal, and cannot be. What is, in Nature, agrees with our thought of what must be; but what is done in Morals or Law does not agree perfectly with our idea of what ought to be. We must, then, and especially in legal matters, be satisfied with what is practical, and never sacrifice it for what is chimerical.

The effects from the neglect of this latter rule are evils of fearful magnitude. It has been only by the sturdy good sense of the English people, making them moderate and practical, that they have preserved their Constitution and Laws. In France, the people have had the most destructive political changes, by seeking for a chimerical simplicity, and a logical sequence known only to the abstract sciences, and impossible beyond the sphere of pure speculation. Napoleon, on a memorable occasion, traced the political evils of France to

* Aristotle uses this illustration, though not precisely in this form.

these causes. After the Russian campaign, he thus spoke to the Council of State :

“CONSEILLERS D'ETAT : * * * C'est à l'idéologie, à cette ténébreuse métaphysique, qui, en recherchant avec subtilité les causes premières, veut sur les bases fonder la législation des peuples, au lieu d'approprier les lois à la connaissance du cœur humain, et aux leçons de l'histoire, qu'il faut attribuer tous les malheurs qu'a éprouvés notre belle France.

“Ces erreurs devaient et ont effectivement amené le régime des hommes de sang. En effet, qui a proclamé le principe d'insurrection comme un devoir ? qui a adulé le peuple en le proclamant à une souveraineté qu'il était incapable d'exercer ? qui a détruit la sainteté et le respect des lois, en les faisant dépendre, non des principes sacrés de la justice, de la nature des choses, et de la justice civile, mais seulement de la volonté d'une assemblée composée d'hommes étrangers à la connaissance des lois civiles, criminelles, administratives, politiques, et militaires ? Lorsque on est appelé à régénérer un état, ce sont des principes constamment opposés qu'il faut suivre. L'histoire peint le cœur humain ; c'est dans l'histoire qu'il faut chercher les avantages et les inconvénients des différentes législations. Voilà les principes que le conseil d'un grand empire ne doit jamais perdre de vue.”

This final rule is, as you observe, universal. It attends conception of the quality, observation of the case, estimate by sentiment, judgment by reasoning. For all to be correct, there must be Proportion, and for this proportion we must be ever moderate, ever practical ; excessive and chimerical in nothing. And by this last rule you will counterbalance your ideal conception, and keep it, too, from disproportion. You will set what can be against that which you desire as what ought to be. If we are wholly ideal, we shall ever destroy. But if we have no idea of improvements, we will never create. By conception in excess, we are theorists, and not practical men.

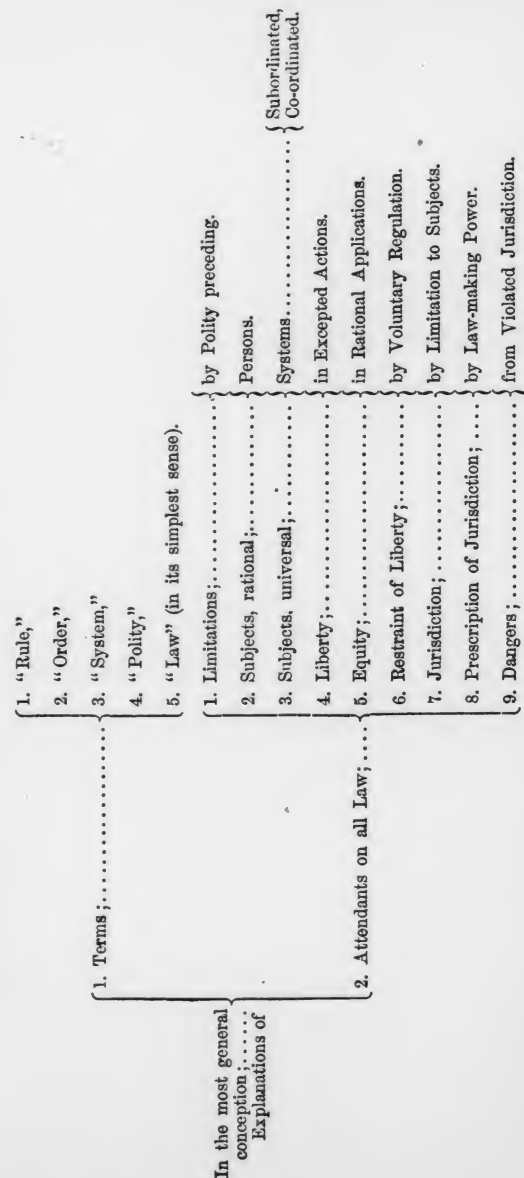
These are the rules which indicate the habits of mind by which you can most pleasantly and profitably study these subjects now awaiting us. The most injurious effects follow from neglect of them. Imagine the contrasts. Suppose you to have no conception of the high purposes of Morals and Laws ; or that you do not study your cases ; or that you support propositions contrary to every man's native sentiments of right ; or that you argue for one side only, in all questions of duty for self, or of justice for others ; or that you rush into extreme and impracticable opinions. It is certain that, with such habits of mind, you would not be one of sound ethical, legal, and political judgment, nor a useful member either of a military court or a military council. I say a military council, for there, too, like habits must be exercised, and both sides of every question fully balanced.

You may thus estimate the value of these rules and the solicitude felt for their observance.

With these you will join those other habits needed in studies of every kind. You will join Attention with Reflection. You will write an analysis of lessons.

If you now refer back to the table, you will see this whole discussion in condensed representation.

Thus, Gentlemen, I have sought to teach you how to think on these subjects. I have not only given you five special rules for Ethics and Jurisprudence, but have founded them on correspondent habits of mind demanded by that group, wherein the leading question is—What ought to be ? I have done all this, and called you to follow me over the whole garden of the sciences, because of my deep solicitude, that in Morals, Jurisprudence, and Political Science, you should think soundly and well. I feel this the more deeply, when I see rash speculations and metaphysical abstractions filling the place of common sense. Again, Gentlemen, trace the words of Napoleon, and estimate the value of Practical Wisdom.



LECTURE II.

COMMON PRINCIPLES OF ETHICS AND JURISPRUDENCE.

WE have seen the mental habits required by the subjects of Ethics and Jurisprudence. We have drawn the rules of thought from the nature of these subjects, and from their position in a map of the Sciences. And, on my part, I have given the laws of just and sound thinking, for this province of the intellectual globe, with the more attentive care, and the more deep solicitude, because the neglect of them is so common, and fraught, in regard to these very subjects, with such immense evils to individuals and to the public.

From the required habits of thought I now come to the common principles of Ethics and Jurisprudence.

You will see at once that, before examining Ethics and Jurisprudence, each by itself, we ought to consider those principles in which both subjects agree. The contrary method, that of treating one without relation to the other, that of neglecting their common foundations, has been much too general, and has been productive, both in morals and in laws, of injurious consequences. The subject, accordingly, to which you are now invited, is that of the common principles of Ethics and Jurisprudence.

The common foundation of both may be expressed in a single word: Law.

Accordingly, I propose, first of all, the most simple and general conception of *Law as a Rule*. Subsequently, we will consider a more particular definition of Law, both from the word and from the thing.

I begin with the simple and general conception of Law as a Rule. Under this head, I propose to you a series of definitions and propositions, all designed to give you those funda-

mental conceptions by which you may clearly understand moral, legal, and political principles. The statements will demand memory. The explanations will require but your passing attention. You will, of course, at first, generalize, because we are seeking not for principles belonging to this or that law, but for those common to all law. Wisely to generalize is ever to simplify. The contrary and vulgar prejudice belongs only to the weak or uneducated mind.

Taking Law, then, as a rule, we need to understand the terms Rule, Order, System, Organization, Polity, successively, and thus to open the way for propositions which regard Law.

1. A Rule and a Class agree in this, that both are modes of order for giving general heads to particulars. Their distinction is, that the word, rule, is rather applied to actions, and class, to things.

Thus, in regulating the individual actions of the day, one would naturally bring them under rules for action. But that pebble, picked up in the path, is spoken of as in the class, stone, and the latter as among minerals. The rose, plucked from its stem, is in the class of flowers, and these in the class of plants. This book is in the scientific, and that, in the literary class. Rules, then, are for particulars to be done; classes, for particulars to be known and named. Rules record modes of action: classes, modes of existence. But the point to be impressed, so that you may have no misconceptions, is, that both rule and class give order to particulars. Accordingly,

A RULE IS A HEAD UNDER WHICH PARTICULAR ACTIONS MAY BE REDUCED: A Class is a head under which particular things may be reduced.

2. ORDER IS THE PROCESS OF REDUCING PARTICULARS UNDER GENERALS.

3. The result of this reduction is called a System. The word System (*συστημα*) means standing together. Things, in classes, stand together in a system. Actions, under rules, stand together in a system. A System of Zoology is an example of one; a System of Tactics, of the other. Hence,

A SYSTEM IS A COMBINATION OF PARTS IN ONE WHOLE, BY ORDER.

4. But, instead of regarding things alone, or actions alone, we may put both ideas together, and consider things as put together purposely for actions. In this case, we use the word, Organization. The medical student is dissecting a dead body on the marble. He is tracing, part by part, the organization of the human frame, as made for the actions of life. Those raw recruits, those scattered fugitives assembling on the plain, are to be made into an army, and that army to be put into the best condition for winning victories. They are to be organized. Accordingly,

ORGANIZATION IS A SYSTEM ARRANGED FOR ACTION.

The word retains its primeval sense, being from *εργον*, a work; it is the order of things for their working.

5. There is a general term which includes both the system of organization and the system of rules. It is Polity.

Polity is order in any system, both for organization and action.

A good example is from the first idea of the word itself. It is from the same source with our familiar words, political, politics, policy, and the like. It is from *πολις* (*polis*), a city. Cities were considered in Greece as sovereign States. The polity of Athens would include both the political organization of Athens, which we would now name her constitution, and the whole body of Athenian laws, as the civil, criminal, administrative, military. The polity of England includes the English Constitution, and the whole code of laws, common and statutory, with all their divisions. Military polity comprehends both the military organization, and the rules, customs, and regulations for the service. Ecclesiastical polity embraces both the constitution of the ecclesiastical body, or bodies, and all their rules and customs. Such is Polity, as the term is here used. The term may be extended just so far as we choose to apply it, even to the universe and its Author. Hence,

POLITY IS ORDER IN ANY SYSTEM, BOTH FOR ORGANIZATION AND ACTION.

6. We now want a term for the heads of actions which we named rules. That term is Law.

Law, in its most comprehensive sense, is a rule of action. It is the rule which is observed, or ought to be observed, by whatever acts, by all beings, all things, natural or artificial, to which action of any kind can belong. Thus, we might speak of the law of a watch, or of a steam-engine, meaning thereby the rule for its movement. We do speak of the laws of Astronomy, the laws of Optics, the laws of Acoustics, meaning specially, rules of action, of movement, for heavenly bodies, for light, for sounds. Human actions are likewise regulated. Contracts must be fulfilled. Debts must be paid. The public rule prescribing such action we speak of as the Law. Hence,

LAW IS A BRANCH OF POLITY, INCLUDING RULES FOR ACTION.

7. Before we come to a more specific view of Law, you will observe its relation to Polity and Organization. Law is a branch of Polity. Law presupposes Organization. It is limited by that previous organization. It is under the restraint of that system of Polity whereof it is a part. The oversight of this plain fact has caused, and must ever cause obscurities and errors.

The law of the watch is evidently limited by the structure of the watch. It cannot go beyond or below a certain rate and extent of movement. The rule of movement in the steam-engine is dependent on the structure of the machine. Certain rates and certain motions are impossible with those materials, that force, that construction. In Nature we meet the same fact. A man cannot fly, nor pass along from branch to branch, among the trees of a forest. His nature is not that of the bird, nor of the squirrel. The movements of the heavenly bodies depend on their nature, and those of the universe on its materials and construction. The actions of God Himself are conformed to His nature. So that everywhere we see that in every thing its law is limited and determined by its nature. The same fact is found in all public regulations. The rules and by-laws of the smallest corporation are limited by the

charter which makes it a body corporate. The municipal laws of any country are limited by its organic law, its Constitution. Wherever, then, there is a rule for action, there is some organic regulation limiting that action. Order, directive of Will, first limits and then guides the Will. It limits by constituting; it guides by Law. Hence,

EVERY LAW IS LIMITED BY THAT SYSTEM OF POLITY WHEREOF IT IS A PART, AND BY THE NATURE OF THE SUBJECT TO WHICH IT IS APPLIED.

8. The rational subjects of Law are persons, collective or individual.

Wherever there is intelligence to perceive a Law, and will to follow it voluntarily, there is a personality. A nation is a moral person having intelligence and will. A single man is a moral person likewise, having intelligence and will. The difference between them is, that the nation is collective, the single man individual. It is highly important for this to be understood: that in Ethics and Jurisprudence the word *person* does not necessarily imply an individual intelligent being, but means equally any collections of such beings which may act with one thought and volition. If any one be at first embarrassed with such use of the word person, he may employ the word personality. All minds are rational subjects of Law, and form persons. Matter is the irrational subject of Law. Thus,

THE INTELLIGENT SUBJECTS OF LAW ARE PERSONS.

9. The subjects of Law are subordinated and co-ordinated systems. This statement includes both the rational and irrational subjects of law.

To explain this, I must show you—1. What are the subjects of Law; 2. That these form systems, to each of which its own Law is adapted; 3. That these systems exist in both a subordinated and co-ordinated order.

(1.) *The subjects of Law are whatever exists.* At the head, is the Creator. Next is the creation, as one totality. Next are the parts of that creation, and these are mind and matter. Created minds, apart from matter, form angelic persons; for

"He maketh His angels, *spirits*." Such minds *in* matter form human persons. Matter, apart from mind, constitutes the material universe, the visible "cosmos." These, then, are the subjects of Law. They are, the Deity; the creation as one whole; angels; men; the material world.

I can simplify and condense the next statement, if you will keep in mind the following evident facts. Persons are individual or collective. Persons, whether individual or collective, are essentially self-determining, self-moving. Whether Law shall come to them from without them, or from within them, they accept it intelligently through reason, and voluntarily through will. This is the case with all minds, from the Eternal down to man. Matter, on the contrary, is and must be moved by a power external to itself. While mind accepts its laws with liberty, and executes them by self-born activity, matter receives its laws under necessity, and obeys them in entire passivity. These facts being in your thoughts, you are prepared for the next statement.

(2.) The subjects of Law *are systems*: I will here, for clearness, follow the reversed order of those subjects, and pass from the material world upward to its Maker. The visible universe is *a system*, proceeding from the most dense materials to the most rare, and thence to primary forces emanating from the first-moving mind. Man, the individual person, is *a system*. He is an organized system, whose parts are mind and body, with their capacities active and passive, ordained, some of them, to be ruling, some to be ruled. Men, collectively, form *a system*. A nation is at once a personality and a system. At the summit is the organization of the whole body politic by its organic law. Beneath that primary association are subordinate associations, running down to single families; and beneath that organic regulation are subordinate regulations, extending down to the acts of individuals. A nation, then, forms a system in the subordinated order; and a group of nations, under International Law, a system co-ordinated. The mind of a single angel is a *system* of high mental powers.

Those beings collectively form a *system*; "the celestial Hierarchy;" the spiritual and eternal Kingdom of God. The creation, visible and invisible, is *a system* of mind and of matter, proceeding wholly, both in substance and in form, from the Creator, and ascending nearer and yet more near to the likeness of Himself, as the gradations rise from the lowest matter to the highest created mind. The dread and boundless Maker is *a system* of transcendent powers. In His nature, He is a mind; infinite; underived; possessing reason, will, and all conceivable attributes of perfection. To us, mentally (that is, to us seeking to make our thoughts the mirror of these facts), His nature is a system, composed of attributes and of powers which we combine in our conception of *One First Being*. Thus are these subjects, all of them, systems.

Also, *to each of these systems is its own law adapted*. The law of every system is and must be adapted to the nature of that system. The laws of the physical universe are fitted to the conditions of matter, and its gradations as these are less and less dense. The law for the individual man is adapted to his nature, as free and accountable. The laws for nations, organic, international, municipal, are adapted to the nature of men as beings who cannot exist apart from some body politic; who are made, as much as bees are, for united life. It is so with all the other subjects. The law of the Deity, for Himself, is that which He approves as conformed to His own nature. The subjects of Law are, therefore, systems, and the systems have Laws adapted to their natures.

(3.) *These systems are in the subordinated and co-ordinated order*. Of these, some are subordinated. Creation is beneath the Creator, matter below mind, the family subordinate to the State. And in the human person, the body is subordinated to the mind, body and mind to will, will to reason, reason to conscience; while conscience, like the most ethereal matter of the visible universe, is the direct recipient of the laws, will, and influence of the Deity. Some systems are co-ordinated. The constellations above the earth, and nations on it, are examples.

International law regards nations as equal in respect to each other. So within a nation, municipal bodies, families, individuals, are equal before the law in respect to each other. Hence,

THE SUBJECTS OF LAW ARE SUBORDINATED AND CO-ORDINATED SYSTEMS.

10. It results from this, that wherever there is Law there must be Liberty.

By Liberty I mean that, in every subject to which a law is applied, all the actions of that subject are not prescribed by the law so applied. These excepted actions form a liberty as regards that law. The term, as here used, is, therefore, relative.

Observation presents this fact to us universally. We see it in the most common things. In driving or riding a horse, while giving law by the rein, we yet allow freedom, by leaving the animal in some particulars to his spontaneous movements. Children are under family rules at home, and under regulations at school, but in their sports and in trifling matters have liberty. Laborers in a field or factory, have their directions and regulations. But these are limited to connection with the work. Nature and reason thus lead men in common actions to have Law for essentials, and Liberty in non-essentials. We all know and instinctively feel that we could not rationally follow any other course.

We see it in human laws. A corporation, though bound by its charter, is yet free to make any regulations and by-laws not contradictory of its organic law. A village, a city, a county is free to make its local regulations, provided they do not annul the law or constitution of the State or of the United States. A State is free to make its own constitution and laws, provided they do not contravene those of the National Government. In the most despotic countries, the subjects are left free in numerous actions which authority has not the wish, or not the power, to regulate. In an army, each subordinate officer or soldier has liberty or discretion in some particulars. The same principle is seen in all ecclesiastical polity. In all Government, civil, military, ecclesiastical, the rule which men

follow till their practical reason is clouded, is this: "In essentials, Law; and in non-essentials, Liberty." The practical races, Roman, English, Russian, American, have instinctively granted this local liberty, and thus formed vast political societies. The theorizing races, the Grecian, the Celtic, have as instinctively refused it, and thus produced tyranny or division.

As in Government, so it is in the administration of justice. The courts of law punish wrongs committed by man on man, but not the offences of a man against his own conscience.

If from human Society you pass to Nature, the same fact is seen. Created mind is distinguished from matter by freedom of will. You can choose wrong or right, evil or good. You are under law, but it is a law of liberty, law accepted by volition. The Uncreated Mind is sovereign and free. His law for Himself is to conform to His own nature, but under that law, He is sovereign and free in His actions. Observation thus shows the fact that Liberty accompanies Law.

Reason shows why it must be so. It results from the fact that the subjects of Law are subordinated and co-ordinated systems. In all co-ordinated systems there must be liberty in each as compared with the others. For example, a nation, as compared with others, or within a nation one municipal body, one family, one individual, is free from the interference of equals. In subordinated systems, what is inferior is not only subject to the next superior, but to higher superiors, and there must be liberty for obeying the higher. Thus a soldier receives command from his officer, but a command from the superior of that officer frees the soldier from obedience to that first command. This is universally the case in all kinds of subordination under Law.

And hence the maxim that Law is accompanied with Liberty extends even to matter. The material universe presents subordinated systems, as well as co-ordinated. Thus, the ocean is under the laws of fluids, but these are modified by the sun, moon, and atmosphere. The atmosphere has its laws, but

these are modified by the ethereal fluid which enfolds and pervades all things. No one ever attempted to tune, by theory, a musical instrument of several octaves, without finding the evidence of this higher interference at the end of his work. His theory was by atmospheric, but the instrument has felt ethereal undulations.

You will see by observation and reflection that into a universe like this, both necessary and contingent causes must enter; both Law and Liberty. It is only metaphysicians who attempt to spin the world from their brains, as the spider his web, that contemplate necessity alone.* Whoever begins with the world as it stands, and conforms his thought to it, always considers necessity and contingency, Law and Liberty, as going forth together from the beginning of the world. Accordingly,

WHEREVER THERE IS LAW THERE MUST BE LIBERTY.

11. Wherever there is Law for *reasonable* beings, there must be Equity.

This results from the last. As every law leaves liberty in some particulars, there must be among *rational* beings a rational use of that liberty, and this is Equity. A law speaks in general. It is, as was shown, a head for particulars. No law, as literally expressed, includes every case that may arise under it. A piece of land with a house, for example, is under mortgage, and the money due upon it has not been paid by the prescribed day and hour. By the literal reading of the law and the bond, the property passes to the creditor and can be instantly sold. But many cases arise where this would be unjust, and be directly against the intention of the law. Then arises equity of redemption, by which the debtor is allowed to redeem that estate through equitable conditions. Other examples may suggest themselves. I will present but two. The

* The reasoning of the fatalist is, that it is derogatory to the Creator not to suppose necessity. He can and ought to foreordain every thing; therefore, He has. The answer is: if He have the right and power to necessitate, He has equally the right and power to abstain from necessitating. Every moral act of the human mind shows that for it, at least, He has chosen the latter.

rule is to give another what belongs to him. Here comes one intent on murder, and claims a sword he has left with me. Another, known to me to be plotting rebellion, claims a sum of money likewise left. In both cases I must break the letter of the rule, and withhold the property. If I do not, I am accessory to murder, in the one case, and to rebellion in the other. This principle extends through all Jurisprudence. It also exists in Ethics. Under every moral rule, literally expressed, cases will arise, where the intention of the maker of the rule is to be considered, rather than the letter of the precept. Thus, the letter of the Divine law is, "In it ('the Sabbath-day') thou shalt do no manner of work." But works of necessity and charity are allowable on that day. They literally break the precept, which says "no manner of work." They form the equity of this Divine law, and this equity is sanctioned by the founder of Christianity.

This explanation will not only assist you in Ethics, by calling you to reason and good sense in applying all moral rules, but in Jurisprudence, also. In that you will want to understand what is meant by equity. The Constitution of the United States, for example, will speak of "cases arising in law and equity."

You will observe, then, that in every country, there must grow up a body of equity by the side of its body of laws. It was so in Greece and Rome. It is so in France, England, and the United States. It ever has been, and ever must be so. Some lawyers in each country, seeing the decisions in equity, form a code of rules, which restricts the decision of each judge, give a technical and limited sense to the term equity, and forget its primitive sense and origin. To guard you against misconception, I must discriminate the different senses of the word.

Equity has, like many words, primary, secondary, and tertiary meanings, the latter two being natural derivatives from the former.

Equity, in its primary sense, is *the spirit of Law*, since all law aims to be equitable. The very word shows it to mean

equality, and equality (as was shown in Practical Ethics) is the idea, the very soul of all Justice. Equity, therefore, is a division of Justice. In this primary sense, the signification is single, not relative: "He will judge the people with *equity*."

In its secondary sense, Equity is a relative term. *It is the correction of law.* A body of laws is supposed to have been formed. Their literal application to particulars proves, in some cases, inequitable, and thus contrary to the spirit of the law and the intention of the legislator. A defect thus arises, not necessarily from deficiency in the law-maker, or in the law, both which may be the best of their kind. It arises from deficiency in the nature of things, their particulars being innumerable, and from deficiency in the nature of language, whose general terms will not express all particulars. This defect needs to be rectified.* If the legislator could reappear, and, in view of the new case, make a law for it, the rectification would be complete. In his absence, the nearest possible approach to his rectification is made by supposing him present, by entering into his intentions, and using the reason which is common to us and him. Then arises Equity in its secondary sense,—as *the rectification of law*.† Grotius, as quoted by Blackstone, defines it, "The correction of that wherein the law (by reason of its universality) is deficient."‡ I only object in this to the word "*deficient*." The law, referred to its real home and dwelling-place, which, as we shall subsequently see, is the mind of the legislator, is not necessarily deficient. It is rather inapplicable.

In its tertiary sense, Equity is the body of decisions and rules formed in any country by the judges and courts, whose office is to rectify the operation of the prominent body of laws belonging to that country, so as, by Equity, to prevent injustice. Here, too, the term is relative. We must first know

* The Greek word for equity has this secondary sense. It is the yielding of the law to a pressure: *ἐπιεικεία* (*ἐπι, ἐκω, to yield*).

† *Ἐπανόρθωμα νόμου*.—Arist., Nic. Eth., lib. 5, c. x.

‡ Blackstone. Introduction to Commentaries.

what is the prominent body of law belonging to that country. Then, and then only, have we a key to its Equity.

Thus, in England the prominent body of law is the common and the statute: the common law "whereof the memory of man runneth not to the contrary;" the statute law by acts of Parliament. The courts of equity in England are relative to this English law, and, in that relation only, are courts of equity. These courts have taken, in order to fulfil their relative office, not the individual discretion of judges, but portions of the civil (Roman) law, and of the canon (Ecclesiastical) law. They are, then, bound not only by the code taken, but by their own decisions made. In regard to these rules of action, they are courts of law, but, in regard to the body of English law, they are courts of equity.

Such, then, are the three senses of the word Equity—the first primitive, the two others derivative; and of these latter two, both of them relative, the one general, the last technical and local. Accordingly,

WHEREVER THERE IS LAW FOR REASONABLE BEINGS THERE MUST BE EQUITY.

12. There follows now a still more general maxim.

Wherever Liberty is exercised, Law must be accepted.

You will keep in mind that the term Liberty, as here used, is relative. It is relative to the particular law for any system, and expresses the simple fact that, by that one law, all the single actions of that system are not regulated. I simply mean by the maxim just announced, that these excepted actions must be brought under some other regulation. Without this, there must be disorder. And disorder causes evil. To be regulated, these excepted actions must be guided by Reason, human or divine. An example of the guidance of excepted actions by human reason we have just had under Equity. In the laws of nature, which, as we shall learn, are from divine reason, we see that so soon as a substance is set free from the laws of one system, it comes under those of another. That gunpowder, in grains, is under the laws of disintegrated solids. The units

press together. Apply the spark. They pass from the laws for solids, under those for aërials, and repel each other irresistibly. And so in spiritual laws. We withdraw ourselves from the directive and remedial laws of God, only to come under those that are penal. And so it is in human political laws. When the people of France, in their first Revolution, broke up all law and order for liberty, what did they find but the tyranny of public passions and public necessities? They found the need for bread, for armies, for revenues, for private morality, in other words, for law and order. The alternatives were simply Anarchy or Order. So there is liberty for the press, there is liberty for speech, but still this must be regulated, or there is licentiousness, demoralizing the individual or the public heart. It belongs, then, to all Law, as existing in subordinated and co-ordinated systems, that,

WHEREVER LIBERTY IS EXERCISED, LAW MUST BE ACCEPTED.

13. *Every law implies jurisdiction. Jurisdiction is the limitation of a law to its proper subjects.*

The reason is, that every law implies a subject.

As Law is a branch of Polity, every law must have its own system as its subject. As Law is a rule of action, every law must have in that system its own series of actions as its proper subject. The limitation of any law to the subjects belonging to it (the system and the actions) is its Jurisdiction. Thus, the jurisdiction of a father, giving law to his family, is limited to that little domestic system, and to the actions which are under his control. The jurisdiction of conscience, administering ethical law, is within the mind, the personal system, and extends to the man's voluntary actions, not to the involuntary; to his own actions, and not to those of other men, unless they are under his authority. Many jurisdictions are limited by place. Thus, the jurisdiction of the laws of a city, county, state, territory, province, nation, is limited by the boundaries of each. Some jurisdictions are limited by persons. Thus, the ordinary jurisdiction of military law is over military persons, without restriction by place. Some

jurisdictions are limited by things. Thus, admiralty law applies to things used in navigation, such as vessels, but not to those fixed on land, as houses.* Most jurisdictions are limited by time. Thus, military law (except in specified cases) limits punishments to offences committed within two years. Laws regarding both personal and real property have statutes of limitation. All jurisdictions are limited by the kinds of actions regulated. Thus, criminal law is for criminal actions, and no man becomes the subject of that kind of law till he has committed an act of the kind called crimes.

The word *Jurisdiction* expresses this idea,—the limitation of a law to its proper subjects. The word is from *ju-ris* and *dict-io*. It is, literally, the act of law-speaking. It is the voice of a law, addressed not to the world at large, but to and of its subjects. As all speech implies a speaker, persons spoken to, and things or persons spoken of, so is it with the voice of law. Law speaks to definite persons, and of definite persons and things. The word judge has nearly the same elements. The term judge (*judea*), is from *jus* and *dico*. It means, literally: I speak the law; that is, I speak as the law speaks. The law, however, must speak antecedently to the judge, and he must speak after, and as it has spoken. That is to say, Jurisdiction must precede all judging, and all judging, without Jurisdiction first given, is, in Jurisprudence, illegal, and, in Ethics, immoral.

Jurisdiction is, therefore, for laws what *property* is for men. Each man does not own the whole world, but simply has his own. So no one law attempts to regulate every thing, but has its own. Or, it is for laws what *business* is for men. No man exercises all trades, but each has his own vocation. In that thronged city, on that crowded wharf, you see many men working and moving, but each one has his own business, his own line of movement. So is it with every law. There are many divisions of Law, as we shall see afterward, working in

* England has lately made some anomalous arrangements in her courts of Admiralty, and extended their jurisdiction to the land, in cases presented from the Privy Council.

heaven, over earth, and in the mind, forming together one harmonious whole. But, *each law has its own business to perform, and the limitation of each law to its proper business is its jurisdiction.*

Thus, clear and simple ideas can be formed of jurisdiction,—a subject on which many have confused ideas, from the absence of explanation, and whereon such perilous mistakes have been made. The subject belongs here, and not, as might at first appear, under Jurisprudence. It belongs here, where we are considering the common foundations of Ethics and Jurisprudence. For both have their respective jurisdictions. By disregarding this fact, the public conscience has often been made to invade the sphere of the private, and the private that of the public. We may, then, be satisfied that

EVERY LAW IMPLIES JURISDICTION. JURISDICTION IS THE LIMITATION OF A LAW TO ITS PROPER SUBJECTS.

14. The jurisdiction of a law must be fixed by the authority ordaining that law, and not by its subjects.

Make the simplest rule of action for yourself, and write it. You must specify something to be regulated. That specification forms the jurisdiction of that small rule. So it is with all Law, from this to the highest human laws, and from these to the laws of God. The power which makes a law declares and confers jurisdiction. Jurisdiction flows from the law-making power, and not from those who administer or execute that Law. They may think that the jurisdiction ought to be enlarged or extended. But this point must be determined by the law-makers. Thus, the Legislature of a State organizes courts of justice, each with specified jurisdiction. The Executive, the Governor, could not make that court of justice; nor confer jurisdiction; nor, when it is established, can he enlarge or contract its jurisdiction. But the point to be observed by you is, that this is not a mere fact in political and judicial regulations, a fact with which you are more or less familiar, through your own observation. It is a principle belonging to all law, divine or human, public or private. It springs from

the nature of a rule of action. Whosoever makes a rule of action specifies something to be done, permitted, avoided. To specify is to limit, and Jurisdiction is limitation. We can, then, acknowledge that

THE JURISDICTION OF ANY LAW IS FIXED BY THE AUTHORITY ORDAINING THE LAW.

15. In any well-arranged system of laws, the disregard of the bounds of jurisdiction for each part must produce disorder for the whole, unless the invaded part be lawless.

For example, in American institutions, alike in the States and in the United States, are three co-ordinated systems—the legislative, executive, and judicial. These, all, are subordinated to a higher system—that of a constitution. The constitutions and laws of the States are not to contradict those of the United States. All are under the control of one people, who form or change the organic law in a prescribed way. These are so many spheres of jurisdiction for subordinated and co-ordinated systems of law. Our whole welfare lies in keeping each to its jurisdiction. Suppose a legislature to attempt to execute law, instead of making it; an executive to make law, instead of executing; a court of justice to make a law, instead of stating what the law is; or all to break and disregard their constitution; or one State to invade the functions of the nation; or the nation those of one State; or a governor, legislator, or judge, to put forth an article of a constitution, instead of obtaining it from the people in the ordained way. It is evident that our whole American system would be thrown into disorder. The cause would be, *neglect of the bounds of jurisdiction.* But what you are to observe is, that this fact, so familiar to you, because you have grown up among those institutions, is but the representative of a fact belonging to all Law. The constellated American system merely exemplifies a principle which must accompany all rules of action, all Law, moral or judicial, divine or human. No jurisdiction can be enlarged to invasion on another without producing injurious interference. No jurisdiction can be lessened, by withdrawing

from it any part of its subjected actions, without injurious inefficiency. In either case, actions must be ill regulated or unregulated. There must be disorder, and there may be anarchy. Religious laws put in place of the civil; the civil in place of the religious; the military in the place of the civil; the rules for private conscience claiming to annul the laws for courts of justice; or, reversely, the public law invading the domain of private conscience—these are examples of encroachments by one jurisdiction upon another. They break the order of society. It is so universal a principle that it extends to all the laws of nature. Each law of nature has its own sphere of jurisdiction, its system to regulate, and its series of actions. Encroachments by one upon the bounds of another would cause disorder and ruin.

"The heavens themselves, the planets, and this centre,
Observe degree, priority, and place.

* * * * *

Take but degree away, untune that string,
And, hark, what discord follows! Each thing meets
In mere oppugnancy: the bounded waters
Should lift their bosoms higher than the shores,
And make a sop of all this solid globe."

SHAKS., *Troil.*, Act I. Sc. iii.

The principle extends to the laws of God Himself. Having made man free, and left man "in the hands of his counsel," the Deity respects the jurisdiction of the soul which He has given, and, though able, wills not to compel.

We shall subsequently see when and how one jurisdiction can and must, and that legally, invade another.

It is, then, evident, that IN ANY WELL-REGULATED SYSTEM OF LAWS, THE DISREGARD OF THE BOUNDS OF JURISDICTION FOR EACH PART MUST PRODUCE DISORDER FOR THE WHOLE.

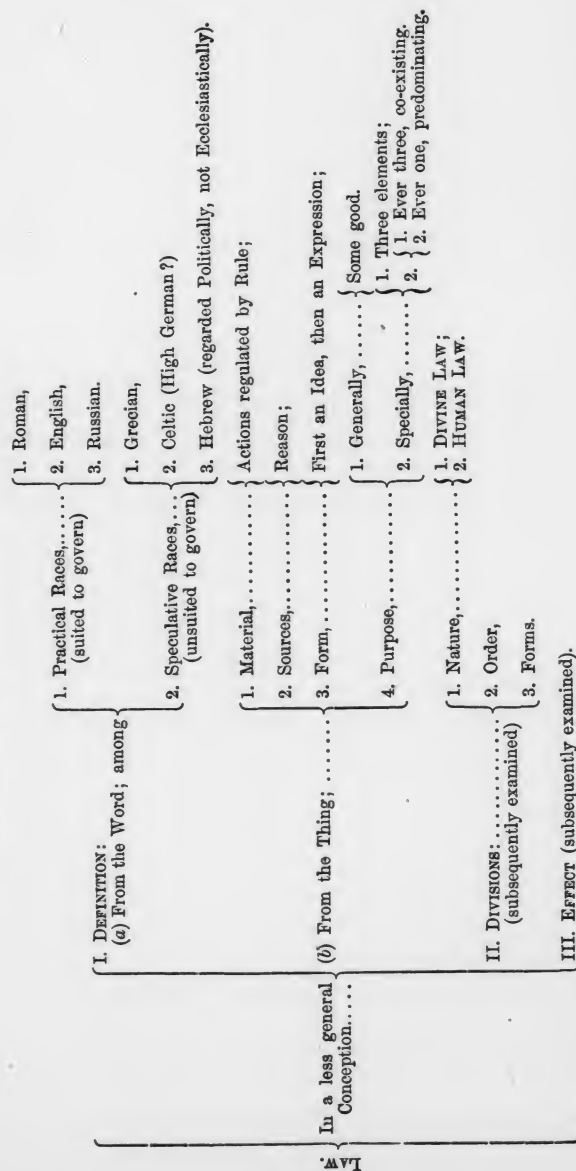
Such are the precedent conditions from Polity, such are the subjects of Law, and such the principles of Jurisdiction. Never could you know from what misunderstandings and erroneous opinions these explanations can save you, unless you

had tried both methods of study; the common, without the explanations, and the present one with them.

I have purposely generalized, that you might see what Lord Bacon commended: the Laws of Laws (*leges legum*), and that you might have principles to guide you in every part of Ethics and Jurisprudence.

From these principles of Law, we will proceed in the next Lecture to its definition.

DEFINITION OF LAW IS FROM A MORE SPECIFIC CONCEPTION.



LECTURE III.

DEFINITION OF LAW.

In the subjects of Ethics and Jurisprudence we have seen the mental habits which they demand, and the common principles which they include.

I now come to a more definite view of Law. Before, we were satisfied with the most general conception of it as a rule of action.

For this specific view, I propose, first, explanations from the words used for Law by different civilized races—the speculative and the practical. We will then pass to a more exact definition from the thing.

In the words, one fact will strike you. The various races have shown their views in their words, their prevailing spirit, in their established terms. Speculative races, among whom nationalities have been broken, incline to that view of Law which regards, first and most, the ruling power, and which disregards local liberties in the ruled. The practical races, among whom nationalities have been compacted, incline to that conception which reverses this movement, which begins with the ruled, and imposes only so much regulation from the ruling authority as is indispensable for unity and harmony.

Our Saxon ancestors had a word for Law which we have not retained. It is, "*aé*."* The word itself is almost familiar to

* Bosworth.

us, from the existing adverb *aye*, as in the expression, "forever and *aye*."* It means what has *always* or long flowed on, till it has become a custom—hence, *a law*. Thus, *ae-béc*, law-book; *ae-dómas*, law-dooms, law-cases; *Cristes-ae*, Christ's law, the Gospel, Christianity. This idea is retained in the maxim, that common law is that "whereof the memory of man runneth not to the contrary." This view of Law is most coincident with the natural views of the race which speaks this language. This word considers Law as a derivation from collective and superior reason, found by the individuals of one generation, and flowing past them to other times.

"*Áé*" being the word for common law, they expressed statute laws by *asetnessa*. This means law *set*, law *statutory*.

They then used an entirely different word for the constitution of a State, viz., *lög* (leg), from *lagu*, which is from *licgan*, and this from *ligan*, Gothic. The original meaning is, to lay down. The constitution of a State is the organic law, laid down as the basis for all other and subordinate laws—laid down as the channel along which the stream of the common law (*ae*) and of the decisions of courts (*aedómas*) shall flow.† Thus they discriminated common and statute law, from the political frame of a constitution.

We have retained this latter word in our English term law, but have made a different application of it.‡ Law, as we now use the term, is applied not to a polity, but to rules of action under a polity. The word law, as we use it, means, then, etymologically, what is laid down. This makes prominent the idea that Law is from a superior authority to a subordinated subject. It is laid down.

The German word takes nearly the same view. Law is *gesetz*, that which is set. But "*recht*" is Procrustean.

The Latin word is *lex* (legis), from which we get such English

* Gr., *dist.*

† See Bosworth and Eittmüller, *Lex. Ang. Sax.*, p. 160.

‡ See Webster's Dictionary, words, *law*, *lay*.

words as *legal*, *legalize*, *legislator*. It is drawn from a root which signifies to unite, to bind together (*a ligando*).* We may see a derivative stem from the same root, in the English word, *link*. The Latin view is directed to the many parts which are *bound together* in one system by law. The Latins conceived that the most diverse interests and populations could be compacted together by a good system of polity and law. Hence their admirable legislation, *binding together* first Italy, and then foreign nations, into one body politic. "*Hae tibi erunt artes*," &c. Virg. *Æn.*, l. 6, 847–853.

The Greek word is *nomos* (*νομος*), from which we have *nomothetic*, and the terminations of *astronomy*, *autonomy*, and like terms. The Greek word is from a root signifying to divide, as shown in *νομω*, to distribute. The Greek view of Law is, in its order of movement, the reverse of the Latin. It considers Law as one rule to be *distributed* among many. The Latins, beginning with the parts, and looking at facts and natural limitations, had the most consummate practical wisdom and forbearance in legislation. They could bind all stones into one arch of empire. The Greeks, beginning with the one rule to be distributed, viewing it as a conception to which facts must conform, were admirable theorists on law, but so wedded to their theories, so incapable of adapting law and government to circumstances, that Greece was always in a state of disintegration. The Greek law-bed was the bed of Procrustes.

The Slavic word, as seen in the Russian, is *zakon*. It is derived from a root, signifying to join, to unite.† The Russian view of Law is like the Roman. It is directed to the many parts, which are to be joined, to be united in one system. It begins with facts, populations, interests, opinions. In view

* It is not from *lego*, to read, nor from *lego*, to choose. The law is read if written; it is supposed to be chosen; but it may be neither the one nor the other. Varro and Cicero could not have indicated such derivation had they possessed the existing materials of philology.

† Sans., *yuga*, *yuj*; Gr., *ζευνο*; Lat., *jugum*; Syriac and Arabic, *zug*;—all resting on idea of joining.

of these, it considers what system of law and government adapted to these circumstances can join them together in one body politic. The Russian experience has, accordingly, been accordant with Roman history in compacting empire, and not with the Grecian, in causing disintegration.

Regarding letters as significant, the Hebrew word for Law means, correspondent movement in all actions and existences.*

Such are the views of Law presented by the words expressing it. They prepare you for a more full definition from the thing.

Law is a rule of action; emanating from reason; in the form first of an idea, then of an outward expression; for some good intended in or through the subject directed by it.

I will unfold this statement.

There are four parts in this definition, which show the material, the source, the form, and the purpose of Law.†

1. The Material.—Law is a rule of action. This states the matter of which Law treats. It has been explained, but I will recapitulate. The particulars are actions. The general term embracing them is a rule. Thus, commercial law is a rule for commercial actions; military law, a rule for military actions; criminal law, for criminal actions; natural law, for natural actions; and so throughout all kinds of actions. Rule belongs to the category of disposition. A good disposition of parts, as of troops, forms order, and a bad one, disorder. Order by method makes a system. A system of parts arranged without special regard to action, presents classes; and, arranged for

* The Celtic view of law (*dleddf, gyfraeth*) seems, in the former of these words, to correspond to the Grecian. Law is that which is given by, or proceeds from one to many. Celtic races need the one-man-power, or become disintegrated. The later Hebrew view is like the Grecian. *דבר*, law, is from *דבר*, to teach, and this, from the physical sense, to distribute. The Hebrew monarchy broke into fragments. But the old theological view of Law, as shown by hieroglyphics for letters, is the most admirable. Law is harmony; part correspondent to part, as the notes and instruments in a concert of music. This is divine law, and it can cover the world.

† Material, efficient, formal, final cause.

intended specific action, organization. Order and system for intended actions, give rules. In these rules are laws. Thus, place and precision can be given to the generic signification of Law. Such is the material; a rule for action.

2. The Source.—Law is an emanation from reason. This states the origin, the efficient cause of Law. It comes from mind, not from matter; and in mind, not from will, as its first source, but from reason directing the will. Accordingly, Cicero says, *Lex est ratio summa*,* Law is supreme reason. All divine laws are from divine reason; human laws, from human reason; savage law, from savage reason; civilized law, from civilized reason; and thus, throughout.

Reason is like mind, uncreated or created: the created, angelic or human; the human, collective or individual.

Such is the origin of all Law—reason.

3. The Form.—Law is first in the form of an idea, then of an outward expression. This part of the definition gives the internal and external form in which Law appears. The internal is in thought; the external, in signs or things.

Thus, a man devising a machine plans it in thought; then expresses his plan in drawings, estimates, descriptions; then puts it forth in things, in the machine made and working. The rule of action was first a thought, then an expression by signs, and finally by things. A legislature passing a law deliberates and compares the ideas of one with those of another. It takes that opinion which has secured the required majority, and sends the statute forth in language to direct certain actions among the people. The Deity creating may be supposed to form His laws in idea, before putting them into nature. *Lex est ratio summa* INSITA IN NATURÂ.†

Hence, by the words "outward expression," I intend expression both by signs and things. Under signs, I include both language as a system of conventional, and symbols as a series of arbitrary and limited signs. The laws of matter, suppose

* De Leg., 1, 6.

† Cic., De Leg., 1, 6.

those of the solar system, are expressed in things by the Eternal Mind.* But men, discovering them, express them in language or in mathematical symbols.

Such is the form of Law; first a thought; then a manifestation in signs or things.

4. The Purpose.—*Law is for attaining some intended good in or through the subject directed by it.* This states the end, the final cause of Law. It is for "some good." That good is set forth, by distinct intention, an act of the will. The good may be real or supposed; it is still "intended." The "subjects directed" are, as we have seen, subordinated and coordinated systems. The good intended is usually *in* and for "the subject directed." A father making domestic regulations intends the good of his family. The laws for any community intend the common good in that very community. But the good intended may not be *for*, but "through," the subject directed. Thus a nation may ordain war. It may command its citizens to die for the public safety. The good then proposed is *through* the subjects so directed, not in them. They are commanded by law to endure for themselves evils to promote the public welfare. That father sends all his sons to die for the country in battle. He proposes through that sacrifice the common good. And likewise, even in the divine laws, we see a lower good sacrificed to obtain a higher. We thus see that the immediate good of any subjected system—a man, a family, a village, a city, an army, an order of people, a part of creation—is not always intended; because evils suffered by a part may be necessary for a higher and wider good in the whole.

Such is the purpose of Law; some good in or through its subjects.

Out of this general exposition of the four parts of the definition, one point in the last requires to be selected for peculiar

* Portions of the revealed law in Scripture appear to have been given in symbols. See the Revelations of St. John, the prophecies of Ezekiel, Daniel, and others.

attention. It is the good which Law, both in Ethics and Jurisprudence, proposes for its end. Is this good simple, or does it ever include several elements? Mistakes in answering this question have produced disasters in history, and dangerous opinions in speculation.

1. The good proposed by all right law includes three elements. 2. The three should coexist, while one or the other predominates according to the circumstances of the subject.

The three elements of that good which law intends, are virtue, duty, welfare: what is virtuous (το καλόν); what is due (το δίκαιον); what is expedient (το συμφέρον). All action implies internal and external ends. Internally, we desire to be habitually what is approvable. This is the conception of Virtue. Externally, we desire to conform in action to the obligations imposed by our relations to others. This is the conception of what is *due*—of *Du*-ty. Externally, also, we desire to obtain what is advantageous for our happiness. This is the conception of Welfare. These three objects, entwined necessarily in the final purpose of law, are given by Demosthenes, in a definition admired and assented to by the ages since his time: "Laws intend what is just, what is honorable, what is useful" (οἱ δὲ νόμοι τὸ δίκαιον, καὶ τὸ καλόν, καὶ τὸ συμφέρον βούλονται). This is the commencement of that definition of Law (Orat. 1, *contra Aristog.*), in which the orator shows his comprehensiveness in philosophy to be equal to his effectiveness (δεινότης) in eloquence.

Lest every mind that I address should not understand and discriminate each of these elements, I will illustrate them one by one, especially from synonymous words.

We ask for what is virtuous, when, in any course of action, we consider what we can approve in ourselves as right. We make this the exclusive aim, when we are not compelled by any external obligation, nor moved by any personal interest. As all men are constituted alike, the action which we respect and honor in ourselves is honored by other men. Hence come the synonymous words, What is *noble*, *honorable*, *admirable*,

excellent, handsome in conduct, morally beautiful. Hence, reversely, *base, mean, dishonorable, disgraceful, contemptible.* The Greek term for this element is the beautiful, (το καλόν). It is moral beauty in actions. The Latin term is, *honestum*, meaning, originally, what is honored. Examples of a striking character are in the acts of martyrs, or of heroic men; Codrus devoting himself to death for Athens; Curtius leaping into the gulf for Rome; Decius, the father, and son, consecrating themselves to be slain by the enemy to make victory certain. But a common example is any act of our own done solely because it is right. Such is one element, Virtue.

What is due or just is determined by our relations to others, imposing obligations on ourselves. Another has authority; we are under obligation to obey. Or, we have made a compact with him; we are bound to keep it. We owe him a debt; we are bound to pay it. He is a relative, a friend, a benefactor; the relation imposes correspondent duties. The Greek term for this idea is the just (το δίκαιον). It is derived from the same root with the word for *two*. It implies equality between two sides—that idea which lies at the basis of all Justice (Practical Ethics; Duties to others). The Latin term is, *justum*, or, in its earliest sense, *jus*. Both are from the primitive idea of commanding (*jussi, jussum*), and this from a root expressing the physical sense of binding. The Latins look to the effect; we are *bound* by an obligation from right in another (Prac. Eth., *ub. sup.*) But the Greeks rather regard the principle, *equality*. In English we express the fact, that we are bound, by the terms, *duty, obligation, accountability, liability, responsibility, engagement*, and the like; but the principle arising from the relation, by *justice, equity, fairness, fitness, dueeness, reasonableness, propriety*, and others. All these terms imply another party, and external relations to him that impose obligations on ourselves.* Such is the second element, Duty.

* How strange it is that some writers on morals should have made this the only element! As a result, their systems are defective.

In asking for what is expedient, we look beyond personal excellence within, and external relations to other persons, and set the will on things which we desire to possess and enjoy. Examples are, a man making a fortune, a State increasing its territory or its revenues. This is expressed in Greek by the term (το συμφέρον); literally, that which conduces; which promotes; which *bears us with it* to our happiness. The Latin term is, *utile*, that which can be used. Our English synonymous expressions are, what is *useful, advantageous, profitable, expedient*, and the like. We pursue *interest, profit, benefit, advantage, welfare, happiness*. We shun *loss, disaster, detriment, misfortune*. In all, we look externally to something to be had for our happiness. Such is the third element—that of Welfare.

We have thus formed distinct ideas of the elements.

These three elements enter into all Law, into all sound rules of Ethics and Jurisprudence. A nation in its acts considers what is honorable, what is just, what is useful. Such an article in a treaty we demand, because the omission of it would be dishonorable; for example, abandoning an ally, or a body of brave troops, or the population of a faithful province, to the vengeance of an enemy. Such an article we accept as just, because we are bound to it by previous engagements. Such an article we desire, because advantageous to our commerce, manufactures, revenue. If, from this example, we descend or ascend the scale of Law, down to private morals or upward to the Deity, the same elements will be seen. The rules of a father for his children would be summed in doing what is right (το καλόν); fulfilling obligations (το δίκαιον); securing welfare (το συμφέρον). The revealed will of God calls men to god-likeness (το καλόν); to obedience to the divine will (το δίκαιον); to eternal happiness (το συμφέρον).*

* A resemblance is even in God's laws for nature. For each thing made, He gives inwardly structure, and outwardly both proportion and means for support. Thus a tree has its inward organization. It is made relative to the earth in size. It is provided with means for drawing nourishment and continuing its kind.

The first proposition may, then, be regarded as elucidated and established. The good proposed by all good law includes three elements.

2. These three elements should coexist in the rules of Ethics and Jurisprudence, but with one element or the other predominating, according to the circumstances of the subject.

This is a fundamental principle. It is a golden rule in all morals and legislation. With it, these sciences may be carried towards perfection for the increase of human happiness. Without it, their former and existing imperfections must attend them.

The contrary view has prevailed extensively, and most injuriously. Each of the three elements has been recognized; but one or the other has been exclusively taken as the basis for systems of Ethics, and for the rules of public policy. The error has consisted in the attempt to found them upon a single principle.

Thus, as we shall see more fully when we consider Ethics separately, some have referred all morals to the third element, to the single principle of expediency, and made morality a calculation; others, to the second, to obligation singly, and made morality a bargain; others, to the first element, to inward excellence alone, and made morality an aspiration. The last, however, have formed the nobler, safer, and wider systems; because, in Ethics, this element of Virtue must predominate.

As in the rules for private, so has it been in those for public, action.

In the age of chivalry and the Crusades, the first element was made in Europe too exclusive both in theory and in practice. The common aspiration was for honor through deeds of glory. Romantic but rash enterprises were undertaken. Armies were sent to perish between Europe and Asia. Kingdoms were impoverished and depopulated. And honor was elevated not only above the third element, interest, but above the

second, justice. Extortion and violence were by the side of heroic achievement. Yet the sentiment saved Europe.

In the age following, we see the third element, that of interest, made too exclusive, by public writers and in public actions. The principle prevailed which once afflicted Greece, that the only test of right was expediency. The common saying was in almost every one's mouth, that nothing which was useful was unjust; that no commonwealth could be governed without injustice.* Machiavelli was the embodiment of this school. "Is there an unruly province? Exterminate. Are there rivals? Execute them without or by trial." From these sentiments came the public and private crimes which make that part of history a scene of revolting horrors.

In this modern age, there is at least respect for the second element—that of justice. Nations cannot, in the present state of public sentiment, disregard their engagements. But the idea is now too prevalent, that so long as a State breaks no positive stipulations which can be enforced, it may do what it will. States have been known to repudiate their debts when these could not be enforced through a suit or war.

The cause of such deviations is in the rage of the human mind for single, when nature and sound reason demand co-ordinate, ideas.† The metaphysician seeks one principle in his own head, as the centre of his system, instead of looking first outwardly to nature, where he would see simple principles in combined action. The common mind adopts this fantastic unity from men of speculation, as saving thought and clearing the ground.

But if you would think wisely in Ethics and Jurisprudence, this common error must be cast away. The three elements

* Kent. Grotius.

† If I were asked to give a single word for sound thinking in all Science and all Art, I would say, RELATION. All knowledge and all skill regard relations between things, not one thing solely. Instead of beginning, therefore, in physical, mental, moral, literary sciences, as men usually do, with one element alone, rather begin with the conception of opposite elements, forming co-ordinated and sub-ordinated systems.

which all men and all systems admit singly, because fixed by Nature herself, must be ever united with one ruling, but with that one varying with circumstances.

The reason is, that in morals and legislation you cannot pursue one alone, and neglect the others, without producing defect.

Take plain examples, and begin in common life. A man has a high sense of honor, but he does not pay his debts, and he wastes his fortune. He has a part of the first element without the others. Who would not pronounce his conduct and character morally defective? Another man looks to his interest only. He will not pay, without compulsion, even the widow and the orphan whose money is in his hands. He will stoop to any means, however disgraceful, for profit. He is a villain. He has the third element singly. A gambler pays the money gained; but he will use dishonorable means for advantage, and he puts his interests at hazard. He observes (in gambling transactions) the second element, "that which is due," but does not regard the others. Come to bodies of men. A corporation—suppose a bank—pays all claims and secures large profits, but it acts disgracefully to its employés. It does not pay them enough for their support; it screws from them excessive labors, and mortifies them by vexatious regulations. We have the second and third elements, but not the first. Take larger bodies. Carthage violates treaties so systematically as to give rise to the saying, Punic faith (*Punica fides*). It withholds disgracefully re-enforcements from Hannibal. It does not regard justice, nor honor, but simply profit. In Germany, some principality stoops to a miserable monopoly for revenue. It sacrifices honor for gain. Everywhere, then, there is defect, if what is honorable, what is just, what is useful, are not all of them regarded, each of them in its proportion and place.

In these subjects, therefore, we must imitate the perfect creations of nature and art. We there see co-ordinate elements united, with one predominating. In the ray of light are three

primary colors existing together. Looking at each in the spectrum, we see that each but predominates in the red, the yellow, or the blue—the other two being interfused. In architectural forms, we have the arch, the angle, the straight line. The noblest buildings of the world present ever one of these dominating, but the others not excluded. In music, no chord is neglected, but one dominates. And so, passing through all domains of science and art, we shall find the same ordinance of nature. So it should be in Ethics and Jurisprudence. Some primary color prevails,—Virtue, Duty, or Welfare,—but with the others intermingled.

Let us, then, regard the principle as fixed. In some rules of morals and legislation, Virtue must predominate, but Justice and Expediency may not be disregarded. The act of Leonidas was one of heroic virtue; but his inscription declared obligation, and suggested the interest of the State. "Tell Sparta we fell in obedience to her laws." In some, Justice must be sovereign, but Honor and Interest are not to be excluded. In some, what is useful is to be the principal object, but Virtue and Justice are not to be forgotten.

The definition is thus fully explained. Law is a rule of action; emanating from reason; in the form first of an idea, then of an outward expression; for some good in or through the subject directed by it; and this good contains three elements, ever united, but with one prevailing.*

* The subject of this lecture is sublimely given by Sophocles in his exquisite tragedy, *Œdipus King*. The chorus says:

"May my words and works be made divine and unsullied by laws:—laws whose footsteps are on high; born amid the heavenly ether, beaming out from the bright synod of Immortal Ones! The dying nature of man could never have made them. Oblivion can never hush them to slumber. By them Almightiness itself has grandeur and never grows old."—*Œd. Tyr.*, 863–872.







